Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
ESTABLISHED 1837
[Registered at the General Post Office as a Newspaper]
LONDON:
SATURDAY, MARCH 21, 1959
Vol. CXXIII No. 12 PAGES 178–196
Offices: LITTLE LONDON, CHICHESTER, SUSSEX
Chichester 3637 (Private Branch Exchange)
Showroom and Advertising:
11 & 12 Bell Yard, Temple Bar, W.C.2.
Holborn 6900.
Price 2*s.* 9*d.* (including Reports), 1*s.* 9*d.* (without Reports).

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REPORTS

NOTES OF THE WEEK

Family Duties or Business?

Magistrates and probation officers are often heard to say that one cause of juvenile delinquency is the fact of both parents being at work and children left too much to their own devices. Some parents appear to think that so long as they are lavish with pocket money and give their children many of the things they themselves had to do without, they are doing their duty. They forget that what their children need more than material advantages is the society of their parents, their interest and their guidance.

The press recently reported a case in which a father frankly confessed to a juvenile court that since his son, now aged nine, was born, his business had absorbed his time to such an extent that the boy was left too much to himself. The father said that his wife was also out at business, and the result was the boy was left by himself from 4 o'clock until the business closed at 7 o'clock. The father said he would now cut out part of his business, in which he had been over-working, at a sacrifice of £1,000 a year of his profits. The chairman of the court commended him for approaching the matter from the right point of view.

It is true that in some families the position is that the mother must supplement her husband's earnings by going out to work. Even then, if it is anyhow possible, she should contrive to see her children off to school in the morning, and be at home when they come in from school. In many cases, however, a woman goes to work because she wants plenty of money for luxuries, and because she finds household duties dull. No wonder that juvenile delinquency often results.

Court Accommodation

The inadequacy of accommodation in many magistrates' courts is a frequent matter of complaint. For some time past the jurisdiction of those courts has been on the increase as Parliament entrusted them with new duties, and the increase in the number of offenders continues, but the accommodation for magistrates, staff, advocates and witnesses, has not in most instances kept pace with the increased work.

Sir Carleton Allen, Q.C., deputy chairman of Oxford magistrates, is reported in *The Birmingham Post* as protesting against the lack of accommodation when the bench was faced with a substantial list of cases and the court was being held in a small second courtroom because quarter sessions was sitting at the same time. He said it was high time that new accommodation was provided. The court anteroom, says *The Birmingham Post*, was crowded with witnesses for both courts. A second court was temporarily moved to the council chamber and it had been proposed to set up a third court in a committee room if enough magistrates had attended.

But for the need for economy in public expenditure there would undoubtedly have been many new court buildings, designed in accordance with modern ideas of what should be provided for the convenience of the courts and of the public. Now that there is some relaxation of the financial restrictions that had to be imposed it may be hoped that local authorities will be in a better position to meet the needs of the courts.

Tape Recorder Evidence

An unusual type of evidence was forthcoming at the Bristol Assizes in a case where a young married woman was charged with attempting to murder her husband, and pleaded guilty to wounding him with intent to cause him grievous bodily harm.

According to the *Bristol Observer* a tape recording of a quarrel between the husband and wife, lasting 18 minutes, which took place immediately before the offence, was played over at the request of the learned Judge after he had been told that a transcript was not available because of the overlapping of voices. It was stated that the recording was not discovered until the wife had been committed for trial, therefore it was treated as additional evidence. The prisoner was bound over for 12 months.

As the case was dealt with on a plea of guilty there would be no need to prove formally that the recording was of the voices of the prisoner and her husband and that it was complete. Such

proof would no doubt be necessary in the case of a plea of not guilty, and someone would have to be called as a witness on these points. It would, we suppose, be quite possible to cut out some portions of the tape recording if it was desired to suppress some part of the evidence.

It seems strange that two people engaged in a violent quarrel should have it recorded in this way, and one can only assume that the husband, who was described as a radio and television engineer, was accustomed to leave the tape recorder working, just as some people keep their wireless sets going whether they are listening or not.

Young Offenders

Mr. C. A. Joyce, for the past 18 years headmaster of the Cotswold Approved School, with his previous experience in the prison and borstal service, is well qualified to write on "Young Delinquents and the Law," and his article under that title in *The Solicitors Journal* of February 6 raises a number of points for discussion. Others with the experience of young people will agree with him when he says that boys despise nothing so much as the person who "lets you get away with it" and *per contra* they have not only a genuine respect but considerable affection for the grown-up who is extremely human but who will stand no nonsense. There is much wisdom, too, in this: "Let adults beware! We are being quite unfair to young people when we give them the impression that they know as well as their elders—or even better." Anyone who has met Mr. Joyce in his books or his broadcasts knows that he would never repress young people, but he would never let them "get away with it" when they do wrong; they have to learn by experience that wrong doing brings its own punishment, but that help and guidance will be forthcoming as well.

Want of the religious upbringing and background is without doubt one of the reasons why young people go wrong. Mr. Joyce states that over 90 *per cent.* of the boys who have passed through his school in the last 18 years say quite openly that they have no time for religion and that they gave up attending church or chapel at the age of 10. The Ten Commandments have gone out of fashion and the majority of young people today do not even know what they are.

The article contains some criticism of our present educational system and he says unless we get back to moral training as a primary function in schools, the present situation will continue and even deteriorate still further.

Punishment

Mr. Joyce criticises the many magistrates who, in his opinion, tend to forgo their functions as judges in favour of a policy of "understanding," an attitude which, he feels, gives the young offenders a totally false impression of their behaviour and of its effect on society in general. As Mr. Joyce puts it: "It is my submission that the first function of a court is to make it abundantly clear, by word and by action, that anti-social and/or loutish behaviour will not be tolerated. Having said that, we can go on to try to understand the motives behind the behaviour and do what we can to cure the trouble. But the order is very important."

Mr. Joyce is quite prepared to resort to corporal punishment as a reply to violence, though he dislikes violence on principle. As he puts it "If young thugs propose to use violence as a matter of policy they should not be allowed to have a monopoly of it. . . . Sometimes in our own school a boy is reported to me for using violence on another boy. My answer to that is 'I don't like violence but if you hit smaller boys I shall hit you.' And what is so interesting is that, with that ultimatum, the violence stops—he no longer uses it, so mine becomes unnecessary. Having got to that stage, I can then reason with the boy concerned. . . . I cannot understand why the opponents of corporal punishment so frequently talk as if the aggressor is being dealt with harshly and unreasonably."

The opponents of corporal punishment as a sentence of a court would doubtless reply that in a school, where detection and punishment follow promptly and with certainty, corporal punishment may well be an effective deterrent, but that as a possible sentence of a court it is less effective. Anyhow, here is plenty of material for discussion.

You May Cross

A driver has so many things to which he must give attention that it is important for any necessary notices which he is supposed to read to be as brief yet as informative as possible. But brevity should not be achieved at the risk of misleading or of encouraging any action which may be dangerous.

The double white line scheme has many good features but we venture to wonder whether the notice which is exhibited at places where the broken white line is nearer to a driver travelling on his correct side of the road and which reads "you may cross" is a wise one. Our suggestion is that the words "if it is safe to do so" should be added. We agree that no sensible and careful driver would cross the line unless it were safe to do so, but the number of accidents occurring daily on the roads is sufficient evidence that there are many drivers who do take improper risks, and we think that no official notice should be so worded as to be capable of being misread by such drivers. Can it be said that such a driver could not seek to justify his crossing the line at an inopportune moment by saying "Well, the notice said I might cross and so I thought it was all right to do so?"

These comments are prompted by reading a recent issue of the Derbyshire Constabulary Road Safety *Bulletin* in which illustrations of the appropriate road markings and notices are shown. It seems that a similar idea to that which we have put forward may have occurred to whoever was concerned with publishing these illustrations because at the foot of the page on which the "you may cross" notice appears is printed "In using the double white lines *it is important* to realize that a *dotted white line* situated nearer to you *is not an invitation to overtake*. You may only do so *after all the usual precautions have been taken*." The parts we have printed in italics are printed in the notes in red.

Out at Night

We have referred from time to time to the powers possessed by the police under ss. 64 and 66 of the Metropolitan Police Act, 1839, for stopping persons in the street. Under s. 66, a constable may stop, search, and detain any person reasonably suspected of having in his possession anything stolen or unlawfully obtained. This means that the most respectable person can be stopped and searched, if a constable thinks it a reasonable ground of suspicion that he is walking home with a bag after arriving by a late train. Section 64 enables a constable to take into custody without warrant any person loitering in any highway between midnight and 8 *a.m.*, and not giving a satisfactory account of himself. This means that the housholder who steps over to the pillar box at night, with a letter for the early

clearance, and pauses to look at the stars or take the air, can be required to "give a satisfactory account of himself," and can be taken by force to the police station if an inexperienced constable considers that account unsatisfactory.

We do not say it often happens, but we do say that it is time for powers like these to be examined in the light of present day ideas, and for the law to be made uniform throughout the country. There are a few parallel powers elsewhere, in towns where old local Acts similar to those in force in the metropolitan police district have not been reviewed by Parliament. The manner in which similar powers have been used in Liverpool has in recent years been before the High Court, but it does not seem that there has been any recent instance in London, where proceedings have been taken to test the manner in which these powers have been used. This may mean that they are used discreetly, but it may also mean that persons who are aggrieved shrink from the publicity they would incur if they took the police to court.

Be this as it may in London, there was a curious incident from the country mentioned in a letter to a London newspaper in February. The letter on the face of it appeared to be authentic: it purported to be signed by a married woman and written from her own address in Berkshire. The story was that she and her husband, walking home from a friend's house on a main road after midnight, were stopped by a policeman on a bicycle who asked their name and address. Having nothing to conceal, her husband gave the name, but the wife asked the constable what was the reason for his asking it. It is the answer he is alleged to have given which gives interest to the story. This answer was that it was 12.10 *a.m.*, and "we" (that is the police) like to know who is out after midnight. We recognize the duty of the police to watch for law breakers, and we do not suggest that it is necessarily improper to ask a person for his name and address—even in absence of the special London power of making him give an account of himself. It does seem strange, however, in these days that the mere fact that a man and woman are walking on a main road at 12.10 *a.m.* should itself be regarded as a reason for so doing. It is likely enough that this was a young constable, rather over zealous. The public might have ground for resentment if he had really been expressing the views of his superiors.

Prisoners' Choice

If young men, qualified for a sentence of corrective training, were given the choice between such a sentence and a sentence of imprisonment of shorter duration, there is little doubt that most of them would choose imprisonment. It is probably true also that most young men would rather undergo a short sentence of imprisonment than be subjected to a sentence of borstal training. Fortunately, the law does not confer such a choice upon them, and where corrective or borstal training offers a chance of reform the court will often prefer to pass such a sentence, in the interests of the offender as well as that of the public.

The Court of Criminal Appeal expressed disapproval of the action of a chairman of quarter sessions who had given the appellant the option of a sentence of three years' corrective training or 18 months' imprisonment, the appellant having chosen imprisonment (*R.* v. *Funnell, The Times,* March 11).

Donovan, J., who delivered the judgment of the Court, said that the appellant had been convicted by justices on a charge of false pretences and committed to quarter sessions for sentence by reason of his previous record. He was eligible for corrective training and the Prison Commissioners reported that he was suitable and likely to benefit from it. The chairman of quarter sessions said this was the best sentence from the appellant's point of view as he might learn a trade and receive some character training, but he went on to say that the proper penalty for the last offence, taking into account the appellant's record, was 18 months' imprisonment, and, comparing that with the minimum sentence, in practice, of three years' corrective training, described the situation as fantastic. Accordingly he gave the appellant the choice of 18 months' imprisonment or three years' corrective training and the appellant chose imprisonment. Donovan, J., observed that if the course taken in this case were to become general the whole purpose of corrective training would be frustrated. Quarter sessions should have faced its responsibility and have decided for itself whether corrective training or imprisonment was the proper sentence. To give the option to the offender was to evade responsibility, and the Court hoped that it would not happen again.

Previous Convictions and Present Offence

The learned Judge deprecated the use by the chairman of quarter sessions of the word "fantastic." It would often happen, he said, that the last offence in a series would not, if looked at alone, justify a three years' sentence, but the purpose of corrective training was to redeem an offender while there was still hope, and a longer period was frequently required than the period of imprisonment which would be imposed if the last offence in the series had to be considered by itself.

In borstal training and corrective training the important word is training and this is the justification for the indeterminate sentence in the case of borstal and the minimum of two years in the case of corrective training. It is not a question only of what punishment is deserved, but rather of the period of training that is needed.

The criticism is not infrequently made that when an offender receives a long sentence for an offence which is not of itself of unusual gravity, partly because of his criminal record, he is being punished again for those earlier offences. That is not true; if an offender asks for, and often receives, lenient treatment in respect of a first offence, then it follows that upon a second and subsequent offence he must expect to be dealt with as an offender who has not profited by a warning and as no longer entitled to expect the same leniency. Moreover, when repeated convictions show a tendency to continue in crime there is the situation for which the legislature has provided a fairly long period of training, not simply as punishment but also as a measure of reform.

Of course it would be wrong to impose a long sentence of whatever kind, in respect of a really trivial offence, *see R.* v. *McCarthy* (1955) 119 J.P. 504; [1955] 2 All E.R. 927. As Donovan, J., observed, it might well be that in some cases the last offence was so trivial that it ought not to attract a sentence of three years' corrective training. That consideration did not apply in the case before the court, however.

The application for leave to appeal against the sentence was dismissed as any revision of the sentence would not have been by way of reduction.

Architectural Style

It was natural that the newspapers should make fun of the demonstration of Kensington art students against the design of the borough council's library.

There was (it may be) an element of calculated farce in their procession. There is good precedent for this: as when Rabelais played the zany in the street, until he could get audience with Chancellor Duprat. All the same, it is a healthy sign when young people publicly protest against what they regard as ugliness in public buildings. So, again, it may be a good thing that a foreign architect is apparently to be invited to submit designs for Churchill College. A building newly designed for Cambridge by a distinguished English architect has been simultaneously criticized, as being out of harmony with other university buildings, in its striving to be modern. In these controversies we prefer (as we have said before) not to take sides either with the modernists or with the followers of accepted patterns—so far as concerns respective artistic qualities and merits. In the sphere of private building, we have taken a stand for the right of the artist and his patron to express their tastes in the idiom which they prefer, and not to be controlled by some governing body elected for quite different purposes. For a generation or so, there has been a good deal of building in the older universities; much of it has been criticized as uninspired, perhaps keeping superficially in tune with the older architectural styles, but with the spirit passed away from them. On the other hand a great deal of the so-called "contemporary" building seems to many English people equally to lack spiritual quality; at best imitations of a distinguished continental architect without the breath of life. At worst, conforming to the opinion expressed by one of our contemporaries about the Kensington building: "If the new library suits its purpose, then the actual style is a secondary consideration." We are sure that the architect himself would not subscribe to this. It is natural for English people to hope that so important a commission as that for Churchill College will go to an English architect, but what is important is that the public at large shall be aware of architecture as a factor in the nation's life. The private patron is dead for good or evil, but it is still open to those who pay the piper to call a tune which future generations will value, as we today value innovations made in earlier centuries.

PERFORMING RIGHTS

[CONTRIBUTED]

There is a time of year when serious drama gives place to pantomime. Seldom does one ask who writes the pantomime, because we have known the old stories from our childhood; but those using a published version of their choice will find that it is the copyright of whoever put it together. Many companies in the amateur world have their own scripts, written as occasion required by a member with the necessary talent, and the likeliest is unearthed when casting begins in the autumn. Copyright in the old stories, like copyright in the miracle plays, vanished in the mists of the past, if it ever existed.

But it is extraordinary how pantomime plots deviate to include the latest vocal number! These and the topical and local gagging of comedians are what makes the "panto" the "hot news" contemporary production it is; and the copyrights of the latest songs have scarcely started, much less run for an author's lifetime and 50 years thereafter, this being the span of life of copyrights allowed by statute.

So, when Dick and his Cat have somehow reached a desert island in order that someone may sing "She Wears Red Feathers," or if the Babes in the Wood chant "We'll Gather Lilac," a problem arises which is not just that of getting the audience to join in. In short, performances in public of songs coming within the Copyright Act, 1956, must be licensed and paid for, unless they are in a show for a charitable object or in connexion with social welfare. Social welfare is really intended to cover the sort of youth club work and adult institute work upon which public money is spent, and voluntary work in the same line; so it would include "drama" or one of the hobbies of a Sunday school class; but not performances by experienced amateurs to the public for money—so far as is known at present. "In public" means, according to cases decided in the courts, that the performance is not a domestic one. It is easy to see that a show put on by a family party—the "amateur theatricals" beloved of Jane Austin—is domestic. A play by a company of adult amateurs, such as a women's institute, in a local hall of the village, is a public performance, however small the hamlet, because the fact which makes an institute not public is that a subscription exists, and a member of the public can get over this impediment by paying. Parents coming to a pantomime by little children of a school seem to get by as "domestic" for one cannot get into family circles as easily as into institutes; but it is questionable policy to advertise in the public press rather than send out circulars about the performance within the group.

Domestic performances, however, rely much upon old songs, whose copyright, if any, has long expired. The organizations with a regular programme of theatrical productions, whether a yearly pantomime or more than this, would do well to have their hall licensed if they do anything for payment. The Performing Right Society, to which almost all the composers and writers involved belong, will assess the programme and license the hall for a smallish sum a year. The fee for a one-act play is a guinea, which is some sort of clue. This society (which is in Margaret Street, W.1.), has inspectors who discover unlicensed performances from time to time and sue in the place of the authors who have empowered them to do so. Hotel orchestras were frequently caught out, but these are by the Copyright Act, 1956, exempt from licence when playing for residents. Nor need the production be by a live artiste; numbers from tape-recorders, pianolas, and gramophones are included, though Phonographic Performances, Ltd., deal with the last.

The new Act does not wholly favour the "powers that be," for it protects the players themselves from being filmed, broadcast, or televised without their consent. It also has set up a tribunal, called the Performing Rights Tribunal, to settle disputes about licences, and these can be sent on to a law court where that is necessary to get fair play on some awkward point, and the new Act has exempted from licence all performances of religious plays in buildings used for public worship.

ADMINISTRATION OF JUSTICE IN LONDON

By ERNEST W. PETTIFER, M.A.

In 1828 there were nine police offices in the metropolis. Seven were established by the Act of 1792 (32 Geo. 3, c. 53) which fixed the sites as " in or near the parishes of St. Margaret, Westminster; St. James, Westminster; St. James, Clerkenwell; St. Leonard, Shoreditch; St. Mary, Whitechapel; St. Paul, Shadwell; (all in the county of Middlesex), and . . . at or near St. Margaret's Hill in the county of Surrey.

Between 1792 and 1829 the location of some offices was changed, as, for instance, when the office at St. James, Clerkenwell was transferred in 1813 to the parish of St. Andrew, Holborn. In still later years other changes were made in location.

The eighth police office was established at Wapping in 1798 and formed the headquarters of the Thames River Police, under the control of the famous Dr. Patrick Colquhoun, and his equally famous assistant, Captain John Harriott.

The ninth police office, the Bow Street Office, had been in existence for at least 60 years before the creation of the seven in 1792, but there is singularly little information as to Sir Thomas de Veil who first established the office, or as to what authority was given to him to act as the first police magistrate there. He was certainly a justice of the peace for Middlesex and Surrey, and from 1735 had held the position of " Court Justice," serving the court and the Government in that capacity. He was succeeded by an undistinguished person of the name of Poulson, but Henry Fielding, barrister and novelist, assisted by his blind brother, Sir John Fielding, first created the system of the magistrate-police officer which was adopted when the seven offices were created in 1792.

One thousand, seven hundred and ninety-two, then, saw eight offices in being and in action in the metropolis. Three magistrates sat at each court. Originally the magistrates had power to appoint six paid constables to each office; in 1802 the number was increased to eight, and in 1811 to 12. The River police, who had their own special problems and needs, had a larger staff. In 1822 there were 23 land and river surveyors, 45 river constables, and six land constables, with a flotilla of vessels at their disposal.

Each court had its clerical staff, the first and second assistants being described as first clerk and second clerk respectively. These men were the forerunners of the staffs allotted to each metropolitan court in present days. The Metropolitan Police Courts Act of 1839 severed the magistrates from the duty of controlling the police; laid down the provision that the magistrates must have a legal qualification, and, with respect to the chief clerks, directed that they must be attornies, or, alternatively, have served in police courts for at least seven years. What the qualification of the court clerks had been before that time is uncertain. (The name of one of them, George Skene of the Queen Street office, has been perpetuated by the fact of his execution for forgery in 1812).

This, then, was the beginning of the system of stipendiary magistrates' courts begun in 1792, upon the lines worked out and tested in the Bow Street office in earlier years, a system which has lasted without a break over 160 years, and, by its long history, has always proved its fitness for, and its efficiency in dealing with, the administration of the law in the great and crowded metropolis.

As we look back at the years which followed 1792 it is difficult to realize that, apart from the small groups of police officers attached to each police office, the stipendiary magistrates with their clerical staffs still had no organized and united police organization to help them to enforce the law, and that they can have received little assistance from the heterogeneous collection of watchmen, parish and vestry constables, hue and cry and other relics of a police system which had long lost any usefulness it might once have had. Such was the position of stipendiaries and staffs between 1792 and 1829 when, in the latter year, the Metropolitan Police Act established the new police for the metropolis. For 10 more years, while the new police were being organized, the stipendiaries still retained their association with the police system, until they were finally severed from it by the Metropolitan Police Courts Act of 1839.

But, so far, no reference has been made to the causes which led to the supersession of the lay justices by the professional magistrates for the parishes which lay around the city, six of them, as we have seen, being in the county of Middlesex, and one in the county of Surrey. (Bow Street being already in existence). In common with all English counties, Middlesex and Surrey had been governed by lay justices from the time of the Statute of Edward III (1360). These justices not only administered the criminal law through their quarter sessions but they also handled a vast civil jurisdiction, and were in control of the licensing system.

At each court of quarter sessions there was a clerk of the peace, who could claim that his origin, or rather that of his office, was little less ancient than that of the court. By the beginning of the seventeenth century the courts had begun the practice of delegating authority to two or three of the justices to inquire into special matters locally, and to report to quarter sessions. Individual justices had always had the power to bind over, and also to examine accused persons before their committal to quarter sessions or Assize, and, in these proceedings they had the assistance of clerks appointed by themselves. These men were paid partly by the fees earned for the preparation of the various documents, and attendances on the justices, the balance of their salaries being paid by the justices themselves.

The whole question of the origins and development of petty sessional courts, and their story cannot yet be pieced together satisfactorily, but we are on firm ground when we assume that, by the beginning of the nineteenth century, there were many petty sessional courts which had one or joint clerks.

In the years before 1792 many county justices had become involved in practices which were irregular, to say the least of them. Regrettable proceedings by the Middlesex and Surrey justices came more directly to the notice of the public and the Government because of their nearness to the official centre, but it is clear that other county benches were not free from guilt. The quality of the men appointed was not what it had been. But one quotation upon this point must suffice—" Only inferior men could be induced to take the office and then only for the sake of the patronage they could control, and for the sake of the perquisites they were able to pick up." (*Melville Lee*).

False charges were preferred against persons who in some cases were innocent of any criminal offence; they were bailed, compelled to pay the fees demanded, and released. Many heard nothing more of the matter. The administration of the licensing laws had become a scandal, and the trading in licences, the wholesale suppression and subsequent re-grant of new licences, were governed mainly by the amount of fees which could be acquired. " The justices of Middlesex," said Smollett, " men of profligate lives, needy, mean, ignorant and rapacious."

The facts with regard to the situation were exposed by several writers of that time, and it would seem that what has been called the Bow Street experiment was indeed allowed, perhaps supported, by the Government with the intention of setting up new courts altogether, presided over by professional magistrates under the direct control of the Secretary of State. It is certain that, from 1792, the strictest supervision was exercised by successive secretaries of state over both the stipendiary magistrates and their staffs, and over the fines and fees.

The justices of the peace were not suppressed; in fact, some of the stipendiary magistrates, for a short time after 1792, sat with the lay justices in the capacity of justices of the peace for Middlesex and Surrey, but as only the licensing business was left, with one or two minor matters, they soon found that they would be more safely and profitably employed in dealing with the large amount of criminal and civil business which had been placed under their jurisdiction in their own courts. The association between the two sets of magistrates was never resumed.

In 1937, a departmental committee, under the chairmanship of Sir Alexander Maxwell, sat to inquire into the position of the lay justices. In para. 7 of their report the Committee found the situation to be as described above, "In the Metropolitan Police Courts district there are two distinct types of courts of summary jurisdiction. First, there are the metropolitan police courts held by professional magistrates appointed by the Crown on the recommendation of the Home Secretary. Secondly, there are the courts held by the justices of the county of London."

The inquiry was held, primarily, because of congestion in the stipendiaries' courts. By law, no more than 27 professional magistrates could be appointed; on the other hand the lay justices could not help because no fees could be taken by them or their clerks except for licensing and certain other work (para. 8 of the report). It was further discovered that, in fact, the clerks to the lay justices had not been acting as clerks when their justices were hearing rates cases, and that town clerks were acting in their stead when proceedings initiated by local authorities were before the lay justices (para. 5). Yet, despite these difficulties, a deputation from quarter sessions expressed the willingness of the lay justices to help in some part of the work of the metropolitan courts if some way were found for them to do so.

(It should be remembered at this point that the Justices of the Peace Act, 1949, by subs. 9 of s. 11, subsequently dealt with the difficulty as to fees by repealing s. 42 of the Metropolitan Police Courts Act of 1839, but placed the justices of any petty sessional division in the county of London under the control of the Secretary of State with regard to the classes of case which should or should not be taken by them).

It would be impossible to summarize, in a brief memorandum, the facts and opinions to be found in the report of the departmental committee, nor is it necessary, for most of those opinions, and the recommendations of the committee, are still only on paper. It is true that the lay justices, for a short period before the last war gave some assistance at the Bow Street court, and that lay justices now sit there with some regularity. Panels of the justices act in the metropolitan juvenile courts. The lay justices are advised by the clerks from the stipendiaries' courts.

There is singularly little in the report with regard to the clerks to the justices of the London divisions. The departmental committee appears to have left this important point to be faced if and when it is decided to bring the two types of London courts into closer relationship. It is nearly 170 years since retribution overtook the Middlesex and Surrey justices in 1792. Generations of clerks have served the metropolitan courts during that long period, and there has been an unbroken succession of clerks to the justices in the courts of the divisions advising on the many problems of London's licensing system. The practical problems involved in any attempt to change the present position of the two sets of courts in London are obvious; it would be futile to speculate here and now as to their ultimate solution.

THE HOUSING ACT, 1957 AND THE RENT ACT, 1957

By J. E. SIDDALL, LL.M., D.P.A.

Section 9 of the Housing Act, 1957, repeating much earlier legislation, requires the local authority to serve a notice upon the person having control of an unfit house requiring him within a reasonable time to execute the works specified in that notice. The local authority must be satisfied that the house is capable of being rendered fit for human habitation at a reasonable expense. What constitutes a "reasonable expense" is defined in s. 39: regard must be had to the estimated cost of the works necessary to render the house fit, and the value which it is estimated that the house will have when the works are completed.

It is now that difficulty ensues.

The Rent Act, 1957, had as one of its declared statutory objects the revision of rent limits of controlled houses in England and Wales. One of the purposes declared during its passage was that an increase in the rent available would encourage landlords to effect repairs, and thereby to halt the process of decay. It seems obvious that with an enhanced gross income investment property is going to have a greater value for the purpose of the estimate under s. 39 of the Housing Act, 1957. There is, however, a major difficulty in that s. 2 of the Rent Act, 1957, prescribes certain procedure for increasing rents, and part II of sch. 1 to that same Act deals with the elaborate procedure, which may have to be by stages, before the rent is recoverable, and also makes provision for certain certificates of disrepair which may be obtained by a tenant during this procedure, the obtaining of which may block the receipt of the enhanced rent. There is the further point that the standard of repair for a house pursuant to the Rent Act, 1957, and the obtaining of a certificate thereunder from the local authority is not the same as the standard of repair which may be required by virtue of s. 9 of the Housing Act, 1957.

Generally speaking, however, in calculating the recoverable rent there is a temptation to rely in respect of controlled tenancies on its being twice the 1956 gross value.

That this method must be reviewed was first brought to my attention in a case reported in the July issue of *The Sanitarian*. Later, through the courtesy of a colleague, the town clerk of Watford, I had an opportunity of reading a note of the summing up by Deputy Judge Gilbert Dare in the Watford county court, and certainly the result of this case is such that it may still be worth while to a property owner not to increase rents under the Rent Act, 1957.

This represents a long journey from the case of *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165, where Mr. Johnson successfully fought an action to enable him to convert two back-to-back houses into a through house in 1934, when the

gross rents, including rates, of both totalled 9*s.* 7½*d.* per week. Today it may often be that the site is worth more than the tenanted property. In that case the owner had put forward that the cost of complying with the plans and specifications would be £106 14*s.* 6*d.*, that the value of the composite house would be £200, and therefore the sum mentioned was a reasonable expense.

In the Watford case it appeared that the total expenditure involved between the four houses comprised in the block was £600. They were treated, properly, individually as houses, in accordance with *Benabo* v. *Wood Green Corporation* (1945) 109 J.P. 222; [1945] 2 All E.R. 162. The total present rents were slightly over £100 *per annum*, and the effect of the Rent Act was that the landlord could now increase the rents to bring them up to a total of about £218 *per annum*. It was apparently in the light of these possible increases that the town council of Watford decided to serve notice in respect of the four houses. If the landlord serves the notice of increase, and the tenant does nothing pursuant to sch. 1 to the Rent Act, 1957, then the rent recoverable under the controlled tenancy has been established and, as Deputy Judge Dare pointed out, the local authority can then intervene and serve notice under the Housing Act, if the conditions warrant it. He then pointed out that both sides agreed that the problem immediately arose because that which was comprised under the notices fell a little short of what probably the tenant could compel under the Rent Act. The council had expanded the repairs it required under the notice to the maximum permissible limit, which the Deputy Judge felt was very proper, but still there was this minor gap.

The point then arises that, on the ground of value, there must be this potential capacity vested in the house to attract the higher rent recoverable under the Rent Act, 1957, which was not there before that Act was passed. This position there must be, even if certain procedure has to be gone through, and yet further possible repairs carried out if a certificate is required by the tenant.

Dealing with a similar provision in an earlier Act, Lord Hanworth in *Cohen* v. *West Ham Corporation* (1933) 97 J.P. 155, said: "By subs. (4) they are to have regard to the estimated cost of the works necessary to render it so fit, and the value which it is estimated that the dwelling-house will have when the works are completed. The word 'regard' is intended to be a loose and indefinite term, and I think it enables the local authority to take into account not merely an accurate estimate made by a surveyor or an estate agent with a schedule of dilapidations, but to take into account what would probably be the cost of the outlay required, and to consider whether, after that outlay had been incurred, it would be possible to let the house and get a return for the total expenditure upon the premises."

Deputy Judge Dare pointed out, however, that it was difficult for the local authority to take advantage of the Act, and then to ask the court to assume first of all that the rents would be increased—because there was no power in the court to order a landlord to increase rents.

That seems to represent the dilemma between the operation of the two Acts.

As the Deputy Judge said, repairs to old property well represented the rule that a stitch in time saved nine, and whilst investment value might not be the only means of value, it was an important one. He then dealt with particulars of the type of district and its future, peculiar to the case in point. Finally, he came to the conclusion that the houses could not be rendered fit at a reasonable expense, when he had regard to the estimated cost of the works and the value of the houses when the works were completed.

If with marginal property there arises a general disinclination by landlords to increase the rents in accordance with the Rent Act, 1957, further consideration will have to be given to alternative remedies. As was pointed out in the Watford case, there was an emergency power during the war to make premises wind and water tight. There are powers vested in local authorities with regard to compulsory acquisition and, again, first-aid repairs. There is also the possibility of using the Public Health Act, 1936, to require the abatement of nuisances, even though *Salisbury Corporation* v. *Roles* [1948] W.N. 412 was inconclusive.

APATHY AT THE ELECTIONS

By W. A. SAXTON

Your contributor at 122 J.P.N. 683, tackled this difficult and important problem with laudable intentions. He was understandably out of sympathy with the inexact way the problem has generally been dealt with, and commendably desired to go to work in the proper way. That is to say, instead of argument by loud repetition of the conclusion, he started with his facts and, having set them out, proceeded to analyse them.

It is not suggested that he intentionally suppressed some of the facts—that would be out of character. But it may be queried whether he cast his net wide enough. Did he not in truth only set out the facts of the political aspect of the matter, and fail to consider whether there are other aspects?

May it be here suggested that there is at least one other aspect—the economic. If your contributor could now examine the financial side of the problem, with the access to the statistics of his area that he undoubtedly has, the result should be interesting indeed.

It can probably be shown from his own workings that he erred in concluding that an abandonment of the party whip might solve the difficulty.

He said (p. 684) "the figures I have cited show that, if anything, interest in local affairs was at least as keen in the days of bitter political warfare before the first world war as in the days of the latter part of the nineteenth century when it was rare to find politics in the parish hall council chamber." And then he went on to explain away his facts by the magic power of a vicious spiral of poor publicity leading to apathy, and apathy to poor publicity (without, in any event, explaining what started such a spiral).

So then, really, we are back at the stage of being given an unsupported opinion: that "the party whip is to blame." A fact against it is honestly quoted, the percentages in district council elections being lower than in the towns, but this is explained by a reference to the "undeniable fact" that real power rests with the county council.

This "fact," or at any rate the ratepayer's belief in it, does have a bearing, and possibly a large bearing. The county council is remote from the elector in many cases. The local paper cannot afford to send a reporter to the county town, and the electorate cannot afford to attend the county council meetings. They only meet (publicly) once a quarter anyway,

and that is too long a gap to enable interest to be sustained. Also it means that the vital work is done in committee, often, and indeed nearly always, behind closed doors. There remain however two things to say. First—an unsupported statement, admittedly—that it is probably not the whole answer. Secondly, that it is itself a result and not a cause.

If this is so, and a deeper examination of it must be made in a moment, then the lower poll in district councils is a piece that does not fit into our correspondent's theory and, in the best detective story manner, that theory must be abandoned and another tested.

Let us see whether the same answer is produced by asking why people think that the real power lies with the county council, and by an inquiry into what differences exist between councils before the first world war and the councils of today. The latter is really three questions; let us ascertain them by asking "What kind of difference?" The difference can either be in the raw materials they have at their disposal, the different "end products" they produce, or the "different means they employ." It is probably profitless to discuss one aspect of this last in so far as the means are ourselves. Only the next generation, or the next after that, will be competent to judge us. The means are also, however, the powers entrusted by Parliament, and these will be dealt with.

Why do people think the real power lies with the county councils? Because some of the important powers of today still exercised by the district councils are under delegation agreements; because many of the powers of the district councils have been taken away from them and given to the county councils; because most of the new powers have been given to the county councils and few—or none, if you ignore the relatively unimportant ones such as information bureaux —to the district councils.

Why has this happened? Not because of the larger numbers of councillors of county councils.That is a drawback that unfortunately cannot be avoided, because the principle of "no taxation without representation" overrules the knowledge that "the smaller the committee the more work they do." Nor is it because the county council has any greater emotional appeal to the people; their loyalty is still localized to town or village. It must, therefore, because there is nothing else, be either because of their greater resources, or because of their very remoteness from the people. The last, indeed, fits in with the "economic" theory if "nearness to the people" means nearness to opposition to expenditure. The only aspect needing further comment is that consistency demands that district councils (being the less remote) should show better polling figures than county councils, and confirmation comes because this is well known. The fact that, even so, the figures are not good can be said to reflect the belief that the dead hand of Whitehall—or the county council—is such that it is impossible to "do any good" (*i.e.*, reduce the rates) even if a seat on the district council is obtained by a person desiring economy.

What difference is there between the councils of the period before the first world war and the councils of today, in so far as raw materials are concerned? The materials were, then as now, rates, grants, and other minor revenues. Their volume was very much lower, but their real value was much greater. In addition, as can be easily shown, their incidence was very different, and this is an equally important aspect. The poor used to pay little or nothing in rates. Now, however, their housing standards have been forced up until they have to pay, in rates, more than they can afford. There are no longer gradations of assessments of a low figure, available for them to choose, by moving house, according to their needs. The standard basic house is now that with two or three bedrooms, and its assessment reflects its separate kitchen, bathroom, W.C., water heating system, garden, and so forth.

What is the difference, next, in the end products they produce? The housing is on a much larger scale; the control powers, byelaws and planning, are more or less in scale, so are the town halls, schools, and roads. We think ours are vast improvements, but we never saw those of Victoria's reign when they were new. They were probably accorded just as much awe, or excitement, or what-you-will. But certainly there were more of them. Consider the matter from the long term view—what is our generation leaving for posterity compared with what our grandfathers' generation left? There are some fine buildings, but comparatively speaking not so many. Compare, again, the monuments of the intervening generation, our fathers'; perhaps municipal theatres and halls are typical. The fact is that what is being done now is being done by the county councils. Schools and colleges provide the most numerous class and that is the class most heavily grant aided. Fire stations come next. And so on.

What are not being provided are the parks, art galleries, sports grounds, and other luxuries. In comparison with the water undertakings and sewerage schemes carried out now, those carried out 50 to 100 years ago, from scratch, were monuments to foresight and industry. They have been kept up in towns—they have had to be—but the Minister is currently having to wield the big stick in order to bring the water undertakers to amalgamate to obtain the resources they need for extension. And there we are back again, even unwittingly, at our theme, amalgamation—larger authorities for more resources. This can be demonstrated again in an examination of the third question—means. The means are Acts of Parliament, and the most recent have given powers to larger authorities at the clear, definite, and deliberate expense of the more local ones. Fire brigades, ambulances, town planning, hospitals, civil defence, maternity and child welfare, are the examples that spring to mind most readily, but there are others. Gas, electricity, and transport very nearly went whole heartedly national, and there have been compulsory amalgamations of smaller police forces. Does anyone doubt that ability and willingness to spend has been the reason? A secondary reason, that it is easier for the Government to force up the standards if they have fewer authorities to deal with, does not affect the validity of the argument; in fact it supports it, and it is also exemplified by the demand for larger authorities in the Local Government Act, 1958.

Then the case for centralization for financial reasons must be considered accepted, and so should be the theory that the ratepayer's recognition of his ability to stop either the centralization process or the spendings of the remote authority leads to his apathy in elections.

It might be suggested that the amount of apathy, if it can be considered quantitatively, is out of proportion to the increase in the rate burden. The answer is that it is not out of proportion to the total taxation burden, and the town councillor is near at hand and open to pressure, while the M.P. is not, so long as he is backed by his party. His party cannot suffer from any local issue, only from a national one.

* * * * *

It is often said that no one should criticize unless he can offer something constructive. What can be suggested, then, as a remedy alternative to the Government's one of centralization and yet more centralization?

One put up "for amusement only" is that a councillor should serve for one three-year period only, and then never again. It would thus not be a question of "Vote me back again—look how I kept the rate down," but "Ah, see what foresight I had when I was in—I built So and So."

A more serious contribution is that somehow some system of automatic relief for inability to pay must be brought in. No council could use its existing discretion on a large scale, for fear of the electors if not of the auditor. An income tax pure and simple has the disadvantage of being a disincentive to improved production and therefore to living standards, and yet the difficulty would be gone if only those out of work through chronic illness, or those retired on fixed pensions, were not offering themselves for election, or putting pressure on those who do, just in order to keep the rate down. It is no use recalling the allowances for rates available from the National Assistance Board—many people will not apply, and those that do find that what they get is inadequate.

Incidentally, it must not be assumed that antipathy to restraint in expenditure, in this argument, any more than on the Government's part, involves any desire to countenance careless expenditure, because, as Burke said, "Mere parsimony is not economy."

"£54 A WEEK TO KEEP A TURNED-OUT FAMILY"

This was a headline in the *Sunday Express* of January 11. The paper said: "It is costing Leicestershire county council £54 a week to keep the nine children of Ronald and Beatrice Finney because they were turned out of their 15*s.* 6*d.* a week council house at Coalville for rent arrears. Total arrears? About £18.

"Now the county council are urging Coalville urban council to relieve them of their £2,800 a year burden by rehousing the family—with the rent subsidized by the county council."

The housing authority say that they had rent trouble with the tenants from the start and even when they were eventually taken to court in December, 1957, the eviction order was postponed to give them a further chance. There was no improvement, however, so they were given notice to quit.

It is easy enough to make a good story of this kind of incident but infinitely more difficult to solve the problems created by unsatisfactory tenants, as those who know local government are well aware. Should local authority house owners act differently from private owners and not evict bad tenants because their action will place a burden on the rates? (Private owners are not deterred by this result of their actions: the ratio of private to local authority evictions is 20 to eight in urban districts and in the London county council area 90 *per cent.* of homeless have either been evicted from furnished rooms or have come to London and been unable to find accommodation.) Should housing authorities receive financial assistance from county councils in the provision of special accommodation for problem families and for rent losses caused by deferring actions for possession? Do housing authorities and county councils act promptly enough when trouble with problem tenants is foreseen? Is there efficient co-ordination work of the various authorities? If arrears are allowed to accumulate will this set a bad example to other tenants?

The sixth report of the Central Housing Advisory Committee, published in June, 1955, discussed the problem. The committee's view was that everything possible should be done to keep the family together: they thought that both humanitarian and financial considerations pointed to this being done. The importance of early action against unsatisfactory tenants was stressed including the issue of distress warrants or default summons. Various methods of providing alternative accommodation were discussed, the point being made that the cost of providing housing accommodation is much less than the expense incurred in keeping families in Part III accommodation or children in a children's home: it was mentioned that county councils have power to contribute towards district council expenses under this head. The most hopeful basis for constructive action, the committee thought, was for county district councils to provide intermediate accommodation and for county councils to provide the rehabilitative services.

Last year the question of homeless families was raised in Parliament and the Prime Minister was asked to set up an Inter-Departmental Committee to review the problem and make recommendations. This he refused to do, after consulting the Ministers concerned, having concluded that what was wanted was not an inquiry but efforts to implement and improve existing arrangements.

A conference was held in July last between the Government departments concerned and representatives of the local authority associations when discussion took place under the three heads of prevention, rehabilitation and reinstatement.

It was agreed that the best place for preventive measures was in the family's existing dwelling, that danger signals must be watched for from all sources and consequently that close co-operation of all services was required. Arrears of rent should not be allowed to accumulate without action: once arrears commenced to grow action should be taken within a month.

On rehabilitation the conference considered adequate intermediate accommodation a necessity. This should be provided by the housing authority who should, wherever possible, allocate accommodation especially for problem families.

The representatives of the Ministeries concerned undertook to issue to welfare and housing authorities advisory circulars covering the points discussed. At the time of writing these circulars have not been issued: in the meantime there is considerable diversity of practice and, in some cases, room for improvement in present standards of service and co-operation.

The Urban District Councils Association believe that county councils should contribute substantially towards the cost of intermediate accommodation and from time to time individual county districts apply to counties for financial assistance for this purpose, or to pay rent arrears, or to guarantee the housing authority against loss through retaining problem families in houses during the rehabilitative period.

Section 56 of the Local Government Act, 1958, gives county councils discretionary powers to contribute towards the expenditure of any of their county districts, but applications for the use of county money obviously create problems of their own, county money being county district money in origin. For instance, some housing authorities are more efficient

at rent collecting than others: the efficient authorities would be less likely to need assistance to meet rent arrears than others who do not do their work so well but would still have to bear a part of any county contributions to other districts. If it were accepted that any financial assistance would be conditional upon efficient administration (which would involve deciding such matters as the difference between unsatisfactory and unfortunate tenants) the county and the county districts would all be put to additional administrative work of doubtful value in attempting to satisfy this test. Furthermore, even if the conception were sound and capable of implementation the district councils would in all probability object to such investigations. There would be other difficulties in devising a satisfactory scheme: it would be necessary to decide, for example, at what point county council aid should be invoked, and whether it should be scaled up or down according to the resources of individual county districts.

The financial problem is not a large one: this has been emphasized by the local authority associations. While we do not think that a rigid rule should be made eliminating county contributions entirely, it may well be agreed that in general the amounts involved are too small to warrant the expenditure of time and effort solely to re-allocate money between one authority and another. For the same reason the allocation of charges in any one authority to the housing revenue account instead of to the general rate fund, or *vice versa*, is not likely to produce a noticeable effect.

The really important thing is, of course, to ensure as far as humanly possible that the ratepayers as a whole are not required to house and feed whole families who do not pay their rents. The individual difference in weekly cost is large as the Leicestershire case emphasizes.

This being accepted, however, it is still necessary to keep a sense of proportion. For example, the total expenditure on the provision of temporary accommodation of one large county in the current year amounts to less than one-tenth of a 1*d*. rate: this experience is not at all exceptional.

Nevertheless, although the burden is relatively little it can be lightened further by full co-operation worked in a sensible and statesmanlike manner: it must be admitted that there is some room for improvement. It is important that the number of families who in this way become largely dependent on the rates for their living expenses should be kept to the absolute minimum of really bad cases. Some of these there must be, but if prevention, rehabilitation and reinstatement are tackled throughout the country on the lines of what is now being done by the best authorities the present small number of cases can be further reduced.

RETIREMENT OF DISTRICT COUNCILLORS

By PHILIP J. CONRAD, F.C.I.S., D.P.A.(Lond.), D.M.A.

The three year term of office for councillors is an accepted feature of the English local government system to which we have become thoroughly accustomed. As regards district councils, this simple provision stems from s. 35 of the Local Government Act, 1933, re-enacted in amended form, split as ss. 35 and 35A, in sch. 2 to the Local Government Elections Act, 1956, but its origin goes back to the Local Government Act, 1894. The main purpose of the Act of 1956 was something of an O. & M. exercise, designed to bring about the synchronization of rural district council and parish council elections beginning in 1958, so that both polls could henceforth be taken together in the interests of economy and convenience. The transitional arrangements to this end are now in course of fulfilment. The division of s. 35 of the Act of 1933 into two parts results in a new s. 35, exactly the same as before except for the fact that, instead of being common to both urban and rural districts, it is confined to the urban units, whilst the newly created s. 35A deals separately with the rural units. These parallel provisions still have a good deal of common ground and, for practical purposes, we can therefore treat ss. 35 and 35A as still one, which enables a singular approach to subs. (3) with its important proviso, and the succeeding subs. (4) which forms the basis of this article.

One third as nearly as possible of the total councillors of an urban or rural district (in the latter case having due regard to s. 1 of the Act of 1956) or, in the case of an urban district divided into wards, of each ward, being those who have been councillors for the longest time (unless filling casual vacancies) without re-election, have to retire in every year on May 20, and their places are filled by the newly elected councillors who come into office the same day, thus maintaining the unbroken continuity of council work. This accords with the basic provision which can, however, be varied by virtue of the aforementioned proviso so as to produce a system of simultaneous retirement of all an authority's councillors triennially. There is also a method of restoring the original procedure of retirement by thirds annually. Thus, it may appear that a local authority can act as the whim prompts them, but this is not so, for there is a prescribed majority for effective resolutions, and the county council have the last word.

Looking at the provisions more closely, one finds that where a district council retire by thirds and deem it expedient to go over to the system of one election triennially for the whole membership of the council, they must frame a resolution to this effect and this has to be passed by a two-thirds majority of the council members present and voting on the resolution. Absent and non-voting members are thus discounted. On request by the district council based on a resolution passed in this way, the county council, if they too consider it expedient to provide accordingly, may by order give directions to that end, but observe that they are not bound to do so.

Now comes the method of restoration of the original position. Where an order exists for the simultaneous retirement of district councillors, the county council may, on the like request, by order rescind it, and the rescinding order has to provide for all matters necessary or proper for giving effect thereto and, in particular, it must require all the councillors of an urban district in office at the date thereof to retire in the following May, to be succeeded by newly elected councillors.

Subsection (6) of s. 35A of the Act of 1933 lays down the variation in procedure for a rural district. Thereunder a county council is empowered to direct in which year or years of each triennial period the councillors for each electoral area shall retire, so as to secure that (i) as near as possible one third should retire every year; (ii) there is no conflict with the new system of simultaneous retirement of rural district and parish councillors; (iii) as far as practicable the

councillors who have been district councillors for the longest time without re-election shall retire before the others.

The practical effect of all this is that much to the confusion of the public mind elections are held in some urban districts annually with one third of the council membership going to the electorate on each occasion, whilst in others all the council members retire together in every third year. Either way results in the established three year term of office. In rural districts the position is now less complicated inasmuch as, by whatever method the rural district councillors retire, each parish now has only one rural council election every three years, coinciding with the triennial parish council election.

A rescinding order, apart from providing as it must that on May 20 next all the urban councillors shall retire and the newly elected councillors take their place, will go on to determine the transitional arrangements; usually that one third, as near as may be, of the urban councillors, being those at that initial election who were lowest on the poll, should retire after one year, the second third being next lowest after two years, giving the remaining third who topped the poll the full three year term; thenceforth, the third of the members who have served longest (casual vacancy seats dating back to the original holder's date of election) will retire each year. The disadvantage attaching to this form of changeover from the one system to the other is that, at the first " thirds " election, the retiring members may be easy prey for newcomers in that they only succeeded in becoming marginal councillors a year before. At the other end of the transitional period when the third set of third retire, would-be candidates may hold back in the face of a contest with those who topped the poll three years earlier.

In the case of orders for rural district councils to revert to retirement by thirds, the county council would need to invoke part II of sch. 2 to the Act of 1956 and incorporate in their order provisions for the extension (rather than shortening) of the terms of office of parish and/or rural district councillors in order to secure the simultaneous retirement of these two classes of councillors on the basis reverted to.

Section 56 of the Act of 1933 requires a copy of every county council order herein to be sent to the Home Secretary and the Minister of Housing and Local Government.

The Act of 1956 prefers the phrase " do not regularly retire simultaneously " rather than " retire by thirds," because of the threat to the strict ratio of thirds which it introduces. The term " thirds " has here been used throughout purely for the sake of simplicity.

So much for the law. Now for a brief resumé of the pros and cons of the two alternative methods for retirement, which are still the subject of keen debate. The fundamental method of " thirds " which, incidentally, is not available to county or parish councils, ensures an element of stability and continuity in council representation in that, whatever the fate of those whose turn it is to appeal to the electorate, twice their number remain with the knowledge and experience gained in serving on the council one or two years at the very least. On the other hand, the constitution of the council stands to suffer changes in membership every year; whilst this may provide earlier opportunity for a defeated candidate to try again, its greatest drawback is the constant air of impending change, with barely ten months between the conclusion of one year's election activities and the opening of the next year's campaign, with all the associated formalities that fall on the shoulders of the clerk of the district council in his capacity as returning officer. Nevertheless, there is thus a yearly test of the trends of public opinion, creating a greater sensitivity thereto, particularly in urban districts, but there may be a tendency detected in small unwarded ones for the electorate to become more apathetic than the average, when confronted with a call to the polling stations at such frequent and regular intervals, at any rate where contests are generally the order of the day.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Lord Evershed, M.R., Ormerod, L.J., and Lloyd-Jacob, J.)

DE JEAN AND ANOTHER *v.* FLETCHER

February 23, 24, 1959

Rent Control—Furnished house—Excess rent—Right to recover—Rent of previous tenancy fixed and registered—Subsequent letting at rent exceeding registered rent—Furnished Houses (Rent Control) Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 34), *s.* 4 (1) (*a*), (2).

APPEAL from West London county court.

Premises consisting of two furnished rooms were let by the landlord to a tenant at £2 per week. On the application of the tenant the rent tribunal fixed the rent at £1 per week, which rent was entered in the register kept by the local authority. In July, 1956, the landlord let the premises to another tenant at a rent of £3 per week. The entry in the register remained unchanged, and the present tenant claimed the return of the over-payment of rent of £2 per week.

Held: once a rent had been entered in the register for any premises, that was, unless it were changed, the rent payable, and any excess of the registered rent was recoverable by any subsequent tenant.

Counsel: *J. L. Elson Rees,* for the plaintiffs.

Solicitors: *D. J. A. Griffiths.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Donovan and Hinchcliffe, JJ.)

R. *v.* WEST

February 16, 1959

Criminal Law—Sentence—Postponement—Opportunity to prisoner to fulfil promise to make restitution.

APPEAL against sentence.

In April, 1958, the appellant pleaded guilty at Newcastle-under-Lyme quarter sessions to forgery, uttering a forged document, and fraudulent conversion. The recorder, on being informed that the appellant would be prepared to make restitution at the rate of £3 per week, said: " You are at present in a reasonably good job, and I think it is a very great pity you are not in a position today to make some offer of restitution, but you are not. I shall postpone sentence for six months, because the suggestion is that you can pay up to £3 a week, and it is accepted that the total sum involved is something just under £60. I cannot order you to repay, but I will postpone sentence if you are willing to promise me to come up for judgment in six months." The appellant stated that he was willing, and sentence was postponed for six months. When the appellant appeared for sentence in October, 1958, he had not made any repayment. The recorder then passed a sentence of three years' corrective training.

Held: that it was wrong to postpone sentence in order to give a prisoner an opportunity of fulfilling a promise to make restitution, and that in the circumstances the sentence would be reduced to one of 18 months' imprisonment.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

MILK AND DAIRIES REGULATIONS

The Milk and Dairies Regulations, 1959, which came into operation on March 8, made a number of important changes, the most important of which are:

(*a*) A milk distributor is now required to be registered only with the local authority in whose area the premises from which the milk is distributed are situated. (*b*) Suitable and properly trapped internal drains are permitted in a milking house which is not used for the housing of cows, and where drainage by open channel is impracticable. (*c*) The Minister may permit milk to be cooled in a closed container in a milking house which is not used for the housing of cows where the cows are machine-milked and the milk passes direct to the churn in which it will be cooled. The bulk collection of milk by road tanker from farm is facilitated. (*d*) Provision is made for a local authority to pay compensation to a person who sustains damage or loss through being debarred by the Medical Officer of Health from certain employment connected with milk, including the milking of cows, because he is suffering, or has been in contact with a person who is suffering from a disease liable to cause infection of milk.

THE TREATMENT OF YOUNG OFFENDERS

Advisory Council Invites Evidence

The White Paper "Penal Practice in a Changing Society," gave details of some proposals made by the Prison Commissioners for changes in the existing methods of custodial treatment for young offenders. The proposals were: The development of the detention centre system so that it may replace short sentences of imprisonment up to six months; and for sentences of over six months and under three years, the integration of borstal and imprisonment so as to provide a single indeterminate sentence of custodial training, with a maximum of two years, within which the offender may be released at any time after a minimum of six months on the same principles as now govern release from a borstal sentence, *i.e.*, individual consideration based on response to training and prospects of rehabilitation after release. Those proposals had been referred by the Home Secretary to his Advisory Council on the Treatment of Offenders, which had given them its general approval, subject to further examination of certain matters. The council has appointed a sub-committee, under the chairmanship of Mr. Justice Barry (who is also chairman of the council) to consider the proposals in greater detail.

Anyone wishing to submit evidence for the consideration of the sub-committee should send it to the secretary, Mr. E. R. Cowlyn, at the Home Office, Whitehall, London, S.W.1.

THE WAR DAMAGE COMMISSION

The Chancellor of the Exchequer has reviewed the responsibilities of the War Damage Commission, and has decided that the progress already made towards the discharge of its duties under the War Damage Act, 1943, would now justify a reduction in its membership.

The Chancellor of the Exchequer has appointed Sir Robert Fraser, K.C.B., K.B.E., as chairman of the reconstituted Commission, and Mr. H. N. V. Clarke and Mr. A. Thom, I.S.O., as Commissioners, with effect from April 1, 1959. Sir Robert Fraser served as secretary to the Commission from 1943 to 1949, and has served since then as deputy chairman and secretary. He is now retiring from the civil service and the new appointment will be on a part-time basis. Mr. Clarke and Mr. Thom are at present assistant secretaries employed by the Commission and will retain their civil service rank and status on becoming Commissioners.

HOUSING STANDARDS TO BE REVIEWED

At the suggestion of their chairman, Mr. Henry Brooke, Minister of Housing and Local Government, the Central Housing Advisory Committee have appointed a sub-committee to review housing standards, with the following terms of reference:

"To consider the standards of design and equipment applicable to family dwellings and forms of residential accommodation, whether provided by public authorities or by private enterprise, and to make recommendations."

The sub-committee will work under the chairmanship of Sir Parker Morris, chairman of the National Federation of Housing Societies and formerly clerk of the Westminster city council.

Any person or organization wishing to give evidence should, in the first instance, write to the secretary of the sub-committee, Mr. S. W. Gilbert,, at the Ministry of Housing and Local Government, Whitehall, S.W.1.

IMPERIAL CANCER RESEARCH FUND APPEAL

In a recent broadcast in the B.B.C. "Week's Good Cause," Mr. A. Dickson Wright, M.S., F.R.C.S., the surgeon who is the hon. treasurer of the Imperial Cancer Research Fund, asked for contributions to this pioneer institute of cancer research in the world. He appealed especially to the 300,000 people in this country whom surgery has saved from the fatal consequences of the disease; he pointed out that, thanks to the practical application of research, people's chances of escaping these now are 50 times better than when the fund started in 1902.

It is now announced that the response to the appeal has been most generous: £14,476 has been received so far, and contributions are still coming in.

However, more is needed if the work so promisingly begun against this scourge, which still accounts for one death in five in Britain, is to be carried out to its successful conclusion. Donations can be sent to the Hon. Treasurer, Imperial Cancer Research Fund (B.N.), Lincoln's Inn Fields, London, W.C.2.

ANNUAL CENSUS OF MOTOR VEHICLES, 1958

The number of motor vehicles in use on the roads of Great Britain rose by nearly half-a-million last year to a total of 7,903,638. This is shown by the annual census of motor vehicles for which licences were current at any time during the quarter ended September 30. Vehicles operated by the Service departments, or Government-owned vehicles operated under the Crown vehicles scheme, are not included in these figures.

REPORT OF THE DEPARTMENTAL COMMITTEE ON HALLMARKING

The report of the Departmental Committee on Hallmarking, which was submitted to the President of the Board of Trade on September 3, 1958, was presented to Parliament as a Command Paper on March 3, 1959 (Cmnd. 663). Sir Leonard Stone, O.B.E., Vice Chancellor of the County Palatine of the Duchy of Lancaster, was the chairman of the Committee.

The Committee was appointed on December 7, 1955, and its terms of reference were "to examine the state of the law on the assaying and hallmarking of precious metals, including the passing off as base metals as precious metals, and to recommend what revision of the law is desirable in the light of present day conditions."

The fundamental conclusion reached by the Committee is that the hallmarking system, which dates from early times, continues to serve its original uses, and should be preserved; and extended to cover platinum. Their principal recommendations are the modification and simplification of the system with the many existing statutes repealed and replaced by one comprehensive statute, and the continued operation of the system by assay offices (reduced in number from six to four because of a decline in work).

ADDITIONS TO COMMISSIONS

LINCOLN (KESTEVEN) COUNTY

Herbert George Astley, 7 Wood View, Bourne.

Mrs. Susan Stella Coltman, Carlton Hall, Carlton Scroop, Grantham.

John William Harrison, 15 Launder Terrace, Grantham.

NOW TURN TO PAGE 1

A court has power to extend a maintenance order for a child who is or will be engaged in a course of education or training beyond the age of 16. Such an extension is limited to two years, but may be extended from time to time by subsequent orders, but shall not be extended beyond the date when the child attains the age of 21. (Married Women (Maintenance) Act, 1949, s. 2; Guardianship and Maintenance of Infants Act, 1951, s. 2.)

MAGISTERIAL LAW IN PRACTICE

The Western Morning News. January 20, 1959.

EMBEZZLER SAYS HE WILL REPAY

A man fined for embezzlement said at Plymouth magistrates' court yesterday that he would repay the money.

William Frederick James, 39, *a provision hand, of* 44, *Richmond Road, Taunton, was fined a total of £20 after pleading guilty to three charges of embezzling a total of £26 while employed at a Plymouth firm.*

He asked for 14 *further offences to be taken into consideration, making the total sum involved £59.*

James told the court he wished to apologise to his former employers and to repay the money. He was now in good employment in Taunton.

The chairman, Mr. H. Lobb, said the bench took into account James's promise to repay the money.

There are various statutory derogations from the common law rule that civil and criminal remedies cannot be enforced in the same proceedings and, of these, s. 4 of the Forfeiture Act, 1870, is one of the most important. By s. 34 of the Magistrates' Courts Act, 1952, that section is applied where a magistrates' court convicts a person of felony, and an order for compensation not exceeding £100 can be made for any loss of property suffered by means of the felony. Such an order is enforceable in the same way as costs ordered to be paid by the offender, *i.e.*, under s. 10 of the Costs in Criminal Cases Act, 1952. The offence must be a felony so that the court in the case quoted above could have made an order for compensation but preferred to rely on the defendant's promise to repay the money voluntarily. Another factor may have influenced the court. The amount represented in the charges was less than half the total amount involved and we do not think that an order for compensation can properly include amounts other than those in respect of which the offender was charged, since s. 4 of the 1870 Act uses the phrase: "by way of satisfaction or compensation for any loss of property suffered by the applicant through or by means of the said felony," which must mean the felony or felonies with which the offender is charged.

A wider power of awarding compensation is given to a magistrates' court under s. 11 of the Criminal Justice Act, 1948, wider insofar as there is no restriction on the class of offence. Where a magistrates' court makes a probation order or an order for conditional or absolute discharge, it may, in addition, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable. It is difficult to decide whether the same limitation as to awarding compensation for amounts involved in cases taken into consideration applies. The words "as the court thinks reasonable" would seem to be wide enough to cover the case where the loser is the same in the offences charged and those taken into consideration but it might be more difficult to argue that they were wide enough to cover a succession of losers. In *R.* v. *Peel* (1943) 107 J.P. 159; [1943] 2 All E.R. 99, the Court of Criminal Appeal strongly disapproved of an arrangement whereby a defendant was bound over to come up for judgment and a condition of the recognizance was that he pay so much per week in repayment of defalcations amounting to £70 when the amount in respect of which he was charged with embezzlement came to £5 odd. It is true that, before being prosecuted, he had made an offer to repay which he had partly fulfilled, and it may have been for this reason that the Court condemned an arrangement whereby a criminal court appeared to be enforcing a debt by weekly payments. It may be that the High Court would still take this view of an order for compensation made under s. 11 which included more than the amounts charged. Another matter for speculation is whether it is possible to make an order for compensation under the section on each of several charges where the total amount involved would exceed £100.

A limited power of compensation is also to be found in s. 45 (3) of the Larceny Act, 1916, applied to a magistrates' court by s. 33 (2) of the Magistrates' Courts Act, 1952. This allows the court to recompense a loser where the money stolen or its proceeds are found on the offender. That, in itself, is one of the difficulties of the section and another is the use of the phrase "taken from the offender on his apprehension" which, at first sight at least, does not cover the case where the offender has been summoned.

The subject of compensation and restitution seems likely to be included in the investigation into penal reform recently announced by the Home Secretary. The primary object is compensation for victims of crimes of violence, but a recent statement by Mr. Butler implies that it may extend to victims of other crimes. The law of larceny is also to be examined, and it is to be hoped that the somewhat obscure provisions for compensation and restitution contained in s. 45 of the Larceny Act, 1916, will be re-enacted in a more manageable form.

The East Anglian Daily Times, January 17, 1959.

WOMAN TO PAY FINE OF £10
Stole from Stores with Girl of 14

Describing her conduct as "very reprehensible," the chairman (Mr. F. A. Jacklin) at Colchester magistrates' court yesterday announced a fine of £10 on Mrs. Kathleen O'Dwyer (39), *of 5a Abbey Fields, Colchester, who had denied an allegation of being concerned with a* 14 *year old girl in stealing articles valued at £2 7s. 3d. from Woolworths store at Colchester on December* 17.

The chairman said the bench hoped this would be a lesson to her to take great care that nothing like this happened again, either to herself or the children in her charge.

The girl was placed on probation for 12 *months.*

Nowhere in this report is the name of the 14 year old girl mentioned, which shows a scrupulous but needless regard for the provisions of s. 49 of the Children and Young Persons Act, 1933. This was not a proceeding in a juvenile court and the restriction on publishing the name and address of the defendant did not therefore apply.

The proceedings were governed by s. 46 of the 1933 Act, which provides that no charge against a young person shall be heard by a court of summary jurisdiction which is not a juvenile court, with the proviso (*inter alia*) that a charge made jointly against a young person and a person who has attained the age of 17

years shall be heard by a court of summary jurisdiction other than a juvenile court. In this case, the woman and the girl were charged jointly with the larceny and the adult court was the proper tribunal. The magistrates' court dealt with the girl at the same time as it dealt with the adult. It could, if it had thought fit, have remitted the girl to a juvenile court acting either for the same place or for the place where the offender resided, under the provisions of s. 56 of the 1933 Act, and that court could have dealt with her in any way in which it might have dealt with her if she had been tried and found guilty by that court.

It should be noted that although it is often convenient to deal at the same time with a defendant charged with larceny and a defendant charged with receiving the stolen goods, this is not possible if one of the defendants is a juvenile because, in that case, they are not jointly charged. Each defendant must be tried separately in the appropriate court.

PERSONALIA

APPOINTMENTS

Mr. Jack Willis Caswell has been appointed clerk to Biggleswade, Beds., rural district council. For the past seven years he has been deputy clerk and chief financial officer to Wimborne and Cranborne, Dorset, rural district council. Mr. Caswell succeeds Mr. A. K. Brookes, who resigned for health reasons.

Mr. E. C. Cox, who has for the past 10 years held the post of deputy clerk of the urban district council of Crayford, Kent, has been appointed deputy clerk of Sevenoaks, Kent, rural district council. Prior to his appointment at Crayford, Mr. Cox held positions with Gillingham borough council and as legal assistant with Kent county council education committee. Mr. Cox will succeed Mr. G. D. A. Walford on April 1, next, when Mr. Walford will commence his new duties as clerk to Bakewell, Derbyshire, urban district council, in succession to Mr. B. G. Cadge, who is retiring.

Mr. G. E. Lewis, assistant solicitor with Reading county borough council, has been appointed deputy clerk to Aldridge, Staffs., urban district council to succeed Mr. John Inch, who is taking up his new appointment as clerk to Wellington, Shropshire, rural district council, *see* our issue of February 14, last. Mr. Inch was formerly with South Shields county borough council as assistant solicitor. Prior to his appointment with Reading county borough council, Mr. Lewis held the post of assistant solicitor with Scarborough borough council.

Mr. Neville John Lewis Pearce has been appointed senior assistant solicitor with the county borough of Grimsby as from April 1, next. Mr. Pearce served his articles with the town clerk of Wakefield, and was admitted in June, 1955. He holds the degree of LL.M. (Leeds). He was assistant solicitor with Wakefield city and county borough council from 1955 to 1957. He is at present assistant solicitor with Darlington county borough council, to which he was appointed in September, 1957. Mr. Pearce succeeds Mr. T. A. Nelson, M.A., LL.B., who has been promoted to the position of deputy town clerk.

Mr. Donald Brackley Starke, A.I.M.T.A., A.S.A.A., at present deputy treasurer to Hornchurch, Essex, urban district council, has been appointed treasurer to Caerphilly urban district council, and will commence his duties with the council on April 1, next. He will succeed Mr. John Tomkinson, who will be retiring after 37 years as treasurer to Caerphilly urban district council on May 31, next. Mr. Tomkinson commenced his local government service with the Ellesmere urban district council, where he served from 1914–1922.

Mr. R. E. Woodward, M.B.E., LL.M., has been appointed clerk and chief executive officer of the Mersey River Board. He was formerly deputy town clerk of Leicester. He was assistant solicitor to the Bootle corporation from 1938 to 1940, deputy town clerk of Warrington from 1949 to 1955, and deputy town clerk of Birkenhead from 1949 to 1955. He has been deputy town clerk of Leicester since 1955.

Mr. M. P. Pugh, who retired last October after 34 years' service as prosecuting solicitor for the city of Birmingham, has accepted the appointment of honorary solicitor to the Industrial Police Association.

Chief Supt. Reginald Ernest Geoffrey Benbow, of Birmingham city police, has been appointed chief constable of Mid-Wales in succession to Capt. Humphrey C. Lloyd, who is retiring. During the war he was posted as major and adviser on public safety to the Allied Military Mission to the Netherlands Government; this later became the British Military Mission. He was later transferred to the Military Government of Germany for de-Nazification work.

Mr. Jesse Lawrence, chief constable of Reading since 1948, has been appointed chief of police for the southern region of the British Transport Commission. His resignation takes effect on March 31, next.

Mr. Arthur William Hunt has been appointed to the newly created post of principal probation officer for the city of Southampton. Mr. Hunt is at present a probation officer with the Nottingham combined probation area and will take up his new duties on April 1, next.

Mr. Brian Johnson and Mr. Donald Truesdale have been appointed full-time probation officers to serve the city of Salford, to succeed Mr. Alan Green and Mr. Frederick Finch, who have resigned.

Miss Margaret Joyce Reynolds has been appointed as a probation officer for the county of Durham and assigned to the Durham and Chester-le-Street petty sessional divisions, in place of Miss R. M. Edwards, who has resigned. Miss Reynolds will work from the probation office, 10, Mowbray Street, Durham.

RETIREMENTS AND RESIGNATIONS

Mr. H. W. Jones has resigned his position as deputy town clerk of Yeovil, Somerset, which he has held for just over a year. He intends to return to North Wales to set up in private practice as a solicitor.

Mr. A. W. Wood, O.B.E., clerk and solicitor of the Yorkshire Ouse River Board, retired from the board's service on February 28 last. Mr. Wood, who was succeeded by his present deputy, Mr. M. D. C. North, LL.B., completed 52 years' service in local government on that date.

OBITUARY

Mr. Thomas B. Humphrey, who retired as chief constable of South Shields last April, has died.

NOTICES

SOLICITORS' ARTICLED CLERKS' SOCIETY

Activities for March

Tuesday, 24: West Side Story. Only a few tickets left for the huge S.A.C.S. party going to see this great show. Applicants are requested to send 5*s.* 6*d.* with a stamped and addressed envelope to the Activities Secretary, c/o the Society's address.

April

Tuesday, 7: Debate at the Law Society Hall. The subject will be "That this House regrets the principles and practices of Apartheid." Speakers will include colonial members of S.A.C.S. and invitations have been extended to various South African Societies. Refreshments as usual.

Tuesday, 14: Extraordinary General Meeting at the Law Society, to discuss the policy to be put forward by the committee at the National Conference of Law Students.

Tuesday, 21: New Members' Meeting at the Law Society. Refreshments free to all new members.

May

Tuesday, 5: Debate at the Law Society. Subject will be announced later.

Thursday, 7: Free Dance at the Gay Compton Club, 44 Old Compton Street, W.1. Dancing until 2 *a.m.* with the bar open all night. Members admitted free: guests 3*s.* 6*d.*

Tuesday, 26: Theatre Party. Tony Hurst is arranging a party to visit "Irma La Douce." Applicants are requested to send 5*s.* to Tony at the Society's address with a stamped and addressed envelope.

June

Tuesday, 2: Mock Trial at the Law Society, at which the case of *Dogsbody-Crumb* v. *Dogsbody-Crumb* will be tried before judge and jury.

Tuesday, 9: Swimming Party. We hope to swim at the Dolphin Square pool but those interested are requested to phone Tony Hurst at PRI 8277 (evenings) nearer the date.

THE WEEK IN PARLIAMENT

By J. W. Murray, Our Lobby Correspondent

Consideration of Miss Vickers' amendment to the Street Offences Bill (*see* this column last week) was continued in Standing Committee.

The Attorney-General, Sir Reginald Manningham-Buller, said that the cautioning system was no new thing. As the Wolfenden Report indicated, it was in operation in London and in Scotland, though there was some variation of procedure between England and Scotland. In Scotland, apparently, a woman was apprehended and taken for the second caution to the police station and there formally cautioned. In Scotland she was not, of course, brought before anyone exercising any judicial authority. Whatever might be the position in Scotland, in England and Wales there was no power to apprehend a woman to take her to a police station to caution her and then release her without any charge being preferred against her. There was very grave objection indeed to giving the police power to arrest persons and to deprive them of their liberty, even if only for a short time, when they would not be charged with committing any offence at all. It was for that reason that it was not possible to adopt the Scottish system here. The amendment went further than the Scottish system, for the woman had not only to be brought to the police station, had not only to be apprehended, as he understood it, but also had to be taken before a magistrate. So the same difficulty presented itself—how was she to be brought before the magistrate? Those difficulties could only be overcome if they gave the police power to arrest a woman who refused to come voluntarily, and to arrest her, not for the commission of any offence, but so that a magistrate could talk to her. That was quite without precedent and most objectionable. The Government regarded cautioning as a kind of fender pushed in front of the engine of the law to prevent certain people from being caught in its machinery. It was a protective measure, and they wanted the cautioning system to be part and parcel of a rescue operation. One had to bear in mind in approaching the matter that the present cautioning system in London was something that had been carried on without complaint, and, so far as he was aware, without criticism.

One of the intentions behind part of the amendment and one of the intentions behind part of the new clause tabled by Mr. D. Weitzman (Stoke Newington & Hackney, N.) was to secure that a woman should have the opportunity of challenging the rightness of the caution. There was a real difficulty and a real problem. If the cautioning system was to work properly, in their view it should be kept distinct and separate from any form of court procedure. The fact that the woman was cautioned would not, strictly speaking, be admissible in any subsequent proceedings. Evidence of her conduct on the occasions which led to her caution might or might not be admissible, but evidence of what the police said to her by way of caution certainly would not be.

Mr. B. T. Parkin (Paddington, N.) intervened to ask how the Attorney-General got over the difficulty that, after the discussions on the Bill and the explanations of the administrative machinery, every magistrate would know when a character was brought up for the first time that that was only so because there were two registered cautions somewhere in the books and on the records.

The Attorney-General replied that the magistrate would not know whether the character had been brought up for the first time, not until after he had found the case proved.

Mrs. Lena Jeger: "Why not?"

The Attorney-General: "Because normally evidence of previous convictions is not given, and such evidence will not be given in these cases unless the previous conviction is relevant to the actual conduct. For instance, one could not, in my view, though views may differ about this, give evidence of a previous conviction for prostitution two years previously in order to establish that, at the date charged, the woman was a common prostitute."

He went on to say that the Government felt it was better to run the risk, slight though it might be, of a person being unjustifiably cautioned by a police officer than to run the risk that that unjustifiable caution which the police *ex hypothesi* had given should be followed by arrest and followed by the woman being brought before the magistrate and then something resembling a trial. Anything approaching a trial or finding of guilt was precisely what they want to avoid at this stage. They did not want a finding by a magistrate to be recorded, until all possible means had been taken to deflect her from that course of conduct.

The difficulty was to provide for a cautioning system which did not involve a trial and finding of guilt, but yet enabled a woman who felt that she had been wrongly cautioned to challenge it. It was true to say that the mere fact of cautioning implied that, in the view of the police who had been watching the woman, she had been guilty of loitering for the purpose of prostitution. It did not follow from that, even if a magistrate concluded in a particular case that a caution had been given, that he would for one moment accept that that caution had been justifiably given. The caution would be recorded in a register, as it was now. It would not be a national register covering the whole of the country. There would be a central register in London, as there was today.

On a division, the amendment was defeated by 18 to 14 votes.

The Committee stage continues.

DRUNKENNESS

The Secretary of State for the Home Department, Mr. R. A. Butler, stated in reply to Mr. A. E. Hunter (Feltham) that convictions for drunkenness in the Metropolitan Police District totalled 26,224 in 1958, a decrease of 4·8 *per cent.* over 1957. In the city of London, the number of convictions was 149 in 1958, a decrease of 18·6 *per cent.* over 1957.

MAGISTERIAL MAXIM. No. XXIV

Magisterially, there is no Truer Axiom than that which Commences "The Streets of Hades are Paved . . . etc." as what shall Follow hereafter will in a Measure explain. For it chanced in Days of Yore (when the Acts of 1848 and 1879 were of their Full Splendour, and that of 1952 was but a Dream in the Mind of a Sleeper) that a certain Magistrates' Clerk was, Strangely enough considering his many Worries, of a Kindly Disposition and anxious to help those who had the Good Fortune to practice Regularly, and indeed Irregularly in his Court.

This kindness took the Shape, *inter alia,* of taking Cases out of the Order of the List to oblige those whose Business obliged them to be Elsewhere within a Prescribed Time; or of fixing Special Days to oblige Counsel; or of arranging Adjournments to suit Members of the Lower Branch who were continually essaying the Impossible Task of being in Two Places at One and the Same time.

Consequently, on some Days, so many were the Adjournments, that the Sessions would last but a bare Twenty Minutes; whilst on others it was oft half the Hour after Six in the evening when the Weary Justices and their Clerk, not to mention others whose Professions made it Necessary for them to be there All the Time, would rise from their places spent with the Toils of the Day and make for Home in a kind of Daze.

This kindly, but Unsatisfactory state of Affairs would have continued to the Present Time had not the Malignant Deities into whose Charge has been delivered the Surveillance of Magistrates' Courts decided to Take a Hand.

They from the Lesser Slopes of Olympus, where they were forced to Dwell, so arranged Matters that a High Ranking Government Official was required at that Court as a Most Material witness, a fact which, through the Interference of those same deities, was not Made Known to the Clerk.

Thus, having promised Mr. A that his case would be Taken at the hour of 11, and Mr. B that his Cause should be disposed of before Lunch, the High Official (who was in neither matter) was kept Hanging About until so Late an Hour that he Missed his Aerial Transport to a Distant Land where he was to take part in a Government Mission.

And so, but two days later (for Officialdom, when its toes are Trod upon can move with Speed) the Clerk received a Communication which commenced "Sir," and ended "Your obedient Servant" (though the writer thereof was certainly not, in Truth either a Servant of, or Obedient to, the Clerk) with a certain Amount of Waspish Comment between the Two phrases.

Pondering sadly upon this the Clerk remembered the Latin of his School days "SERVITOR OMNIA, CUI BONO" which those who read may fancy to Translate as "PLEASE THE LOT, AND WHO GETS THE KICKS AND NOT THE HALFPENCE." to which Rhetorical Question he answered Mentally and Sadly "PERDIS, ET IN DAMNO GRATIO NULLA TUO" which in the Vulgar may be rendered "BE FAIR TO YOURSELF and DAMN THE REST." For the Law, though a Learned Profession, must, in its Actions, be Businesslike.

AESOP II.

STRANGER THAN FICTION

It is a curious paradox of this unromantic and materialistic age that many things which were regarded, less than a century ago, as fantasy have come to be accepted as the commonplaces of everyday life. That essentially English institution, the Gilbert and Sullivan partnership, has retained its hold on the affections of the people despite, or perhaps because of, the fact that dramatic situations which have come to be known as Gilbertian, and which seemed satirical and even fanciful in the 1870s and 1880s, are now so frequently met with that they have become ordinary topics for serious newspaper discussion. We referred recently, in this column, to the subject of House of Lords reform and the twilight of the hereditary principle, satirized in *Iolanthe* (1882). Democratization in naval establishments, which was improbable enough to be funny in *H.M.S. Pinafore* (1878), has now progressed so far that recent years have seen a former stoker holding the office of Third Sea Lord; the girl undergraduates that aroused the mirth of Victorian audiences in *Princess Ida* (1884) are now attending all our universities. The adoption of European manners and customs by the Japanese, which seemed comically unlikely in *The Mikado* (1885), has proceeded apace; and the egalitarian society, with a king at its head, which Gilbert imagined in *The Gondoliers* (1889), is reproduced in Holland and Scandinavia; while the impact of death duties has made the "Duke of Plaza Toro, Limited" an accomplished fact in England. *Patience* (1881), which was written as a skit upon the affectations of Oscar Wilde and the aesthetic school, seems at first sight to be more "dated" than the rest; yet its satire might be directed as easily against the modernistic movements in literature and the abstract schools of painting, which bewilder more persons than they satisfy, in the present-day world of the arts. The bold bad Baronet of *Ruddigore* (1887), who amends his ways and becomes a staid and sober Methodist parson, would be no great novelty today. His conversion could be matched from the casebooks of those evangelistic associations of proselytizing Americans which thrive so well on newspaper publicity.

These reflections are induced by the perusal of two recent news-items which seem to us to describe Gilbertian situations in everyday life. The first is the report of a dispute between the authorities and the 36 yeoman warders of the Tower of London. These gallant men have been threatening to discontinue their extra (unpaid) duties because of an impending rise in the rents of their official quarters in the Tower. Having regard to the many centuries of tradition that lie behind their office, to their Tudor uniforms and magnificent (though antiquated) weapons, it comes as something of a shock to read that the warders are members of the Union of Civil Servants, the machinery of which may well have been employed to defend their interests. And the incongruity is the more profound when we read that the dispute is in so prosaic a connexion as a rise in rents—of all places, in the Tower of London. Gilbert and Sullivan's *Yeomen of the Guard* (1888) portrayed as one of its *dramatis personae* the character of Dame Carruthers, Housekeeper to the Tower—a lady of forceful personality who, having had her predatory eye for a long time on the sturdy Sergeant Meryll, leader of the Yeomen, eventually succeeds, by surprising his dangerous political secret, in capturing him for her own. There is nothing in this operetta so incongruous—it would have been more fantastic than ever if there were—as a dispute over increased rents of living quarters in the grim old Tower of London, and a threat, amounting almost to strike-action, among the *Valecti garde corporis Domini Regis*. This was their original title when the guard was first instituted, at the Coronation of Henry VII, on October 31, 1485. They alone, in Tudor times, were entrusted with the elaborate formality of making the royal bed; and from 1605 onwards they have carried out a search in the vaults of the Houses of Parliament at the opening of every session—a proceeding which some of us (who do not share the popular respect accorded to politicians) regard as over-officious. (We well remember George Bernard Shaw, when asked to give, to a respectably pink political organization, a lecture on Parliamentary Institutions, insisting on giving it the title *In Praise of Guy Fawkes*).

Perhaps, however, the greatest change in manners and morals in the past 80 years has been in the attitude of authority towards crime and punishment, and in the increasingly beneficent *rôle* assigned to the police in the work of prevention and reclamation, as opposed to the stern, old-fashioned ideas of deterrence and retribution. Yet it is precisely this modern compassion for the criminal, and consideration for his point of view, and novel ideas of the proper place of the police in society, that seemed so ridiculously revolutionary to Gilbert when he was writing *The Pirates of Penzance*. We venture to suggest that the following is not nearly so funny today as it was in 1880, when capital and corporal punishments were a commonplace, and long terms of penal servitude the penalty for many crimes:

> "When the enterprising burglar's not a-burgling—
> When the cut-throat isn't occupied in crime—
> He loves to hear the little brook a-gurgling
> And listen to the merry village-chime.
> When the coster's finished jumping on his mother,
> He loves to lie a-basking in the sun;
> Ah! Take one consideration with another,
> The policeman's lot is not a happy one."

Nowadays a policeman is no bogey, to threaten a child with; he is somebody you turn to when you need help. So, at any rate, was the belief of the little six year old at Upminster, Essex, who dialled Chelmsford police headquarters on leaving his home on his way to school. "Out went the alert," says *The Daily Telegraph*, "'A boy needs help.'" It was not long before a helpful constable arrived, in a police-car, outside the telephone kiosk, where he asked the small boy what the trouble was. The answer was:

> "My teacher has put ticks against the other children's sums and she says they are good. She put a cross in my book. I want a tick, but she won't give it to me."

Nothing daunted by this novel educational and social problem, the officer took the child, in the police-car, to his school and interviewed the teacher. A spokesman for the police said later "The matter is outside our jurisdiction." That, if we may say so, is immaterial; it is the spirit of dedication, the exalted sense of mission, that really counts.

A.I.P.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Business Mergers and Take-over Bids. Ronald W. Moon. Gee & Co. (Publishers) Ltd.

Young's Taxation Appeals. Second Edition. H. G. S. Plunkett. Solicitors' Law Stationery Society, Ltd. Price 15s. net.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons Act, 1933—*Fit person order—Effect on orders made under the Married Women Acts.*

W has custody of her child (now 14) under a married women's order dated July 26, 1946, H (the former husband) paying 15*s.* a week maintenance until the child is 16.

On November 10, 1958, the child was committed by a juvenile court to the care of the local authority (in respect of an offence), such committal order containing a contribution order of 15*s.* a week against W, the person having (up to that time) the legal custody of the child under the custody order. H discontinued payments under the custody order on December 20, 1958.

Did the fit person order cancel, destroy, or otherwise render ineffective or inoperative the custody order of July, 1946? If it did, was the juvenile court correct in making a contribution order against W after she had been deprived of the child's custody by the fit person order?

Other questions will probably arise as to enforcement of arrears under both orders, and I shall be glad of your observations as to the position generally.

QUERIC.

Answer.

By s. 75, *ibid.*, while the fit person order is in force the person to whose care the child or young person is committed has the same rights and powers as the parents. The custody order under the Married Women Acts remains in force, but the child or young person is to continue in the care of the fit person. The maintenance order against the former husband remains in force until revoked by a subsequent order, and can be enforced.

By s. 86 of the first mentioned Act, the father and the mother are liable to make contributions in respect of the child, and the juvenile court at the time of making the fit person order can by virtue of s. 87, *ibid*, make a contribution order on the mother.

If the mother is not now receiving the amounts due under the order made under the Married Women Acts, she might apply for a variation of the contribution order, or the matter might be dealt with by revocation of both orders by the appropriate courts, and in any case by application for a contribution order against the father.

2.—Criminal Law—*First Offenders Act*, 1958—*Application of its provisions to courts of Assize and quarter sessions when they deal with an offender "in any manner in which the court of summary jurisdiction could deal with him."*

Section 1 (1) of this Act makes it clear that the application of the Act is to magistrates' courts.

I should be glad to have your opinion as to whether the provision of s. 1 (1) of this Act apply in the following situations:

1. When, under s. 8 (6) of the Criminal Justice Act, 1948, a court of Assize or quarter sessions deals with a person after the commission of a further offence committed during the currency of a probation order or an order for conditional discharge made by a court of summary jurisdiction.

2. When, under s. 20 of the Criminal Justice Act, 1948, an appeal committee deals with a person committed to them in accordance with s. 28 of the Magistrates' Courts Act, 1952, but does not sentence him to borstal training, but deals with him in accordance with s. 20 (5) (*a*) (ii).

3. When an appeal committee deals with an appellant against conviction or sentence from a magistrates' court, in accordance with s. 1 of the Summary Jurisdiction (Appeals) Act, 1933.

If you are of the opinion that s. 1 (1) of the First Offenders Act, 1958, applies in any or all of the above mentioned cases, do you consider that s. 1 (2) of the Act applies also?

Further, in the first of the three situations referred to above, would you say that the fact that the person has first to be dealt with for the "subsequent" offence, does or does not prevent him from possibly being a "first offender" when he comes to be dealt with for the breach of the probation order or conditional discharge.

K. NEW HALL.

Answer.

1. No. We interpret s. 1 (3) of the Act of 1958 to mean that the material time at which the offender's status is to be determined is that at which he "falls to be dealt with" and when this happens under s. 8 (6) of the Act of 1948, he has been previously convicted of the offence committed during the period of probation or conditional discharge.

2. Yes.

3. Yes.

We do not consider that s. 1 (2) of the Act of 1958 applies to the higher court.

3.—Food and Drugs—*Food and Hygiene Regulations*, 1955—*Open food for immediate consumption.*

Regulation 28 of the Food Hygiene Regulations, 1955, lays down certain provisions which must be observed regarding the supply of water and other things for stalls, but the regulation applies only where the business carried on from a stall "consists wholly or partly of the supply of open food for immediate consumption." The expression "immediate consumption" seems difficult to interpret, and the question has been raised whether that particular regulation would apply to the sale of fruit and vegetables from stalls in a street market.

Would you please advise whether this type of business carried on from a stall falls within the provisions to which reference has been made.

FENGER.

Answer.

This question was dealt with in P.Ps. at 120 J.P.N. 542 and 121 J.P.N. 136. *See* also note in *Bell*, 13th edn., p. 494.

4.—Highway—*Misfeasance by imperfect work.*

In a country village works have been carried out on the footpaths and highway surfaces, including the raising of the curbstone which is of the normal concrete type about four *ins.* in width. As a result of the work the curbstone is not only some six *ins.* above the height of the road, but is of about the same height above the level of the footpath and so creating a rim between the two. This work was completed some six months ago, and various local inhabitants have made complaints to the local authority that this raised rim constitutes a danger to pedestrians. A member of the public using the road and pavement in a normal way recently tripped over one of these rims and fell to the ground, injuring himself. It appears that this work constituted a misfeasance; we shall be glad if you can let us have your comments and any references dealing with such facts.

PINOD.

Answer.

The curbstone has been placed in a negligent manner and the authority will be liable for any injury arising out of its position; *see Short* v. *Hammersmith Corporation* (1910) 75 J.P. 82; *Hill* v. *Tottenham Urban District Council* (1898) 79 L.T. 495.

5.—Justices' Clerks—*Fees—Order amending probation order when new petty sessional division is named in the order—Payment of fee.*

A number of clerks to justices charge a fee of 3*s.* for amending orders to probation orders when supervision is transferred from one court area to another. Is it in order for a court to take a fee from its own probation officer?

ILCA.

Answer.

We think that a fee of 3*s.* is chargeable and that it should be paid, in the first instance, by the probation officer on whose application the amending order is made. He recovers it, presumably, as part of his expenses.

6.—Justices' Clerks—*Copies of depositions on committal for trial—Supplying copies of exhibits, including photographs, put in by the prosecution.*

I recently acted for a client who elected to be tried by a jury in respect of an offence under s. 15 of the Road Traffic Act, 1930. At the hearing before the justices the police who were the prosecutors produced several photographs which were duly made exhibits in the case. I requested to be given a copy of these photographs, but was told I could not have them as the copyright in the photographs is the property of the chief constable and on making a request for a copy of the depositions I was informed

by the clerk to the justices that under r. 13 of the Magistrates' Courts Rules, 1952, the accused is only entitled to be supplied with a copy of the depositions and not of the exhibits. Counsel representing the accused will obviously be at a disadvantage in preparing the defence, if he is not able to have a copy of the photographs to refer to, until they are produced in court at the trial. This seems to me to be unfair to the accused. I might add that the point has not arisen in several cases in which I have represented the accused, and the Director of Public Prosecutions has been conducting the prosecution, because I have always found members of the Director's staff most ready to furnish me with a copy of any document which I may have (within reason) requested. I should be glad to know if you are able to suggest any means whereby it may be possible to obtain copies of documents (including photographs) exhibited to the depositions on a committal for trial.

MOSCON.

Answer.

It is true that in r. 13 of the Magistrates' Courts Rules, 1952, only the depositions and any written information are referred to. Added to this, r. 12 separates "depositions" and "documents and articles produced in evidence before the justices," so that it can be argued that a clerk's obligation under r. 13 is fulfilled when he supplies a copy of the depositions. It is, however, certainly the practice of some clerks, if asked to do so, to supply with the copy depositions copies of documents without which the depositions can sometimes not be fully understood. But we do not think that a clerk can be under any obligation to supply copies of photographs. We are certainly surprised that the prosecution should decline to make copies of the photographs available to the defence. We have known many cases in which prosecuting authorities, including the Director of Public Prosecutions and a police authority, have produced such copies for the defence as a matter of course. It is clear that if the prosecution attach importance to the photographs as helping to prove their case, the defence are handicapped if they cannot have copies while preparing for the trial. We do not know, however, of any way of compelling their supply at that stage.

7.—Landlord and Tenant—*Immaterial error in formal notice.*

L is the owner of a dwelling-house outside the Metropolitan police district, the rateable value of which on November 7, 1956, was £36. The tenancy of T is verbal. In March, 1958, L serves a notice in form 3 upon T, which is complete and accurate in all respects except that it states the rateable value to be £33 instead of £36. Is the notice in form 3 valid, notwithstanding the error as to the correct rateable value, which does not in any way affect the rights of the parties? Please quote any authorities.

C.T.J.

Answer.

We have not found any decision precisely in point, but the reasoning in *Frankland* v. *Capstick* [1958] 1 All E.R. 209 suggests that an error, which does not affect the substance of the matter, and which either party could detect, would not invalidate this notice.

8.—Licensing—*Ordinary removal—Non-county borough with separate court of quarter sessions—Power to authorize from another part of same county.*

Can the licensing justices for a licensing district, which is a borough having a separate commission of the peace and a separate court of quarter sessions, authorize the ordinary removal to that borough licensing district, of a licence in respect of premises situate in a licensing district which is a petty sessional division of the county in which both are situate?

O.S.A.D.

Answer.

Yes: *see R.* v. *Leamington Spa Licensing JJ., ex parte Pinnington* (1947) 111 J.P. 40. In this case it was disclosed, in passing, that Leamington Spa was not a borough having a separate court of quarter sessions but the judgments in the case seem not at all to be affected by this.

9.—Licensing—*Registered club—Fixing and altering of permitted hours.*

I shall be glad if you will give me your opinion on the following points which have arisen lately in connexion with a football club:

(*a*) Can the club hours be continuous from two *p.m.* until 10 *p.m.*?

(*b*) Can a club vary the hours of opening on notification to the magistrates' clerk and when they think fit, *e.g.*, in the football "close season" can they alter the above hours (if legal) to morning and afternoon opening?

NINCON.

Answer.

(*a*) The Licensing Act, 1953, s. 103 (1) enacts that permitted hours on weekdays in the premises of a registered club shall be fixed by the rules of the club, not more than eight, between 11 *a.m.* and 10 *p.m.*, with a break of at least two hours in the afternoon. "Break" in this context, is usually construed as requiring merely that there shall be a continuous period of at least two hours in the afternoon that is not "permitted hours." It is not unusual for a registered club to fix its permitted hours as a continuous period from two *p.m.* until 10 *p.m.*

(*b*) Yes: but we prefer not to set this answer in the words used by our correspondent. Permitted hours are fixed by the rules of a club. Rules usually make provision for their alteration. If the rule fixing permitted hours is altered (in accordance with the rules) and that alteration is notified to the clerk to the licensing justices for entry in the club register, we think that there is no irregularity.

10.—Licensing—*Sale at on-licensed premises during permitted hours of liquor delivered to unlicensed place—Consumption in unlicensed place out of permitted hours—No offence.*

Three men, A, B and C order 24 bottles of intoxicating liquor from a licensee D during permitted hours on a Saturday night in Wales. D received payment for the drink on Saturday night but he does not deliver the liquor to A, B and C then.

During permitted hours, the licensee D takes the liquor across the garden of his licensed premises to a bungalow 20 *yds.* away on land adjoining the licensed premises. The bungalow is owned by D. It is furnished and D pays rates for it.

The licensee D pays E—a former licensee of the public house in question—£5 *per annum* ground rent for the bungalow site. E lives with D on the licensed premises.

On Sunday morning D sends E with the key of the bungalow to open the door of the bungalow to let A, B and C in to consume the drinks.

NOLIAN.

Answer.

In the situation outlined by our correspondent the only facts, in our opinion, relevant to the question of whether or not an offence is committed are that intoxicating liquor was lawfully bought at on-licensed premises, lawfully delivered according to the instructions of the purchasers at an unlicensed place, lawfully consumed in that unlicensed place.

No offence has been committed.

11.—Local Government Act, 1933, s. 76—*Disability—Co-operative society members—Loan capital.*

Two matters affecting the local co-operative society are before the council, of which about half the members are members of the society. It is being contended that a member who holds less than £500 share capital is not under a disability for voting under s. 76 of the Local Government Act, 1933, as amended by s. 131 of the Local Government Act, 1948, and the Local Government (Miscellaneous Provisions) Act, 1953, notwithstanding that he holds loan capital in addition to share capital which together exceeds £500. If loan capital is not to be treated as share capital for the purpose of s. 131 of the Act of 1948 a person holding more than £500 share capital but no loan capital cannot vote, whereas a person with less than a £500 share capital but a substantial holding of loan capital can vote. From inquiries made it appears that loans may be received by the society from any member or non-member. The rules impose a limit on the amount which can be invested in any year and the maximum rate of interest is governed by the Industrial and Provident Societies Acts. Whereas the holder of the £1 share capital can vote at meetings of the society the holder of loan capital has no voting rights. In the event of winding up the holder of the loan capital would be a preferential creditor.

CAFFOR.

Answer.

In our opinion a councillor who has lent money to the co-operative society on the terms indicated has an interest in transactions between the society and the council, which involves disability from voting under s. 76 of the Act of 1933. This does not depend upon the provision inserted in that section by subsequent amendment, which relates to shareholding. The disability arises because the depositor, as such, is interested in the solvency of the society, not merely in respect of the interest on his deposits, but also because of the facilities given for withdrawing his money, and his rights as a preferential creditor.

12.—Magistrates—*Probation order made at same time as detention order—Effect of* R. *v.* Evans [1958] 3 *All E.R.* 673.

At a sitting of the S—— juvenile court for this division on November 25, 1958, a young person was sentenced to three months' detention on one charge, and a probation order was made on a second charge. As you will know on December 1, 1958, the Divisional Court ruled in *R.* v. *Evans* that the making of a detention centre order and a concurrent probation order was wrong in law. The juvenile court is naturally concerned as to the effect of the decision in *R.* v. *Evans* on their decision in a like case heard a week earlier.

I should be glad, therefore, of your valued opinion as to what you consider should be the right course to adopt in this connexion.

It seems to me, as a matter of strict law and practice, that the decision in *R.* v. *Evans* cannot affect the decision of the juvenile court, in so far as it was made before the High Court decision was made. It also seems to me that no action can be taken by the juvenile panel in respect of their own decision, and that if any action is to be taken, it should be taken by the young person himself by bringing the matter to the notice of the Home Office, with a view to their directing this court as to the proper course to be adopted.

I know of no power whereby the juvenile court, even if they wished, could of their own volition quash the probation order in this case.

I also feel that, unless the probation order is revoked, it must remain in full force and virtue for its period of three years, with all the usual consequences of the defendant being brought back before the court for a breach of the order, or for a fresh offence committed whilst on probation.

QUOSO.

Answer.

The validity of the decision is not affected by the decision in *R.* v. *Evans*, indeed in the latter case it was held that there was nothing in the Criminal Justice Act, 1948, to prevent the probation order being made in these circumstances, but in interpreting that statute it was held that to make such an order was contrary to the spirit and intention of that Act. The effect of that interpretation should cause any court to hesitate to issue process in respect of a breach or a subsequent offence, and to that extent the decision of the S—— juvenile court is affected.

If the probation order continues, process might be issued in respect of a breach, or of a subsequent offence, in circumstances under which the Court of Criminal Appeal has held that the probation order should not have been made.

The probation order might be discharged by the court upon application made by the probation officer and we are of opinion that the probation officer should be advised to apply.

13.—Magistrates—*Summary conviction—Sentence postponed pending remand for inquiries—Defendant wishing to appeal immediately.*

Having convicted a defendant of two separate offences of indecent exposure (s. 4 of the Vagrancy Act, 1842), the justices were minded to remand him to prison for three weeks for inquiry to be made into his physical and mental condition (s. 26, Magistrates' Courts Act, 1952).

Having announced their decision to convict on both charges and their intention to remand in custody for inquiry, counsel for the defendant immediately indicated that his client, there and then, wished to give notice of appeal in writing against conviction, and that he would apply for bail pending the hearing of the appeal.

I had not been faced with the problem before, and to my mind the justices had not completed their functions as they had not yet imposed sentence. The position was resolved by the justices remanding the defendant on bail for three weeks to have the necessary inquiries made.

Should the position arise again, could you let me have any authority for giving notice of appeal after conviction, at a stage when sentence has not yet been imposed.

MILINA.

Answer.

The answer is to be found in s. 84 (2) of the Magistrates' Courts Act, 1952. In our view the effect of that subsection is that as "the day on which the decision of the magistrates' court was given" is to be the day on which the court sentences or otherwise deals with the offender then, by virtue of s. 84 (1), notice of appeal cannot validly be given before that day.

14—Nuisance—*Abatement order not complied with—Non-compliance more than six months old.*

Proceedings were taken under s. 94 of the Public Health Act, 1936, in respect of noncompliance with an abatement notice served under s. 93. The period mentioned in the abatement notice expired in the six months before the date when the complaint was laid. Please give me your opinion as to whether it is necessary to lay such a complaint within the period of six months, or whether the default is considered to be continuing, so that the time limit does not apply.

COMSO.

Answer.

The abatement order having been made and not complied with, the circumstances mentioned in s. 94 (1) have arisen. In our opinion an information can be laid in respect of any day within six months reckoned backwards from the date of the information, notwithstanding that, so reckoned, the first day upon which those circumstances arose has passed.

15.—Parish Council—*Lighting in bus shelters.*

A parish council has provided an omnibus shelter and desires now to fix an interior light in the shelter and pay for electric current. The parish council is not a public lighting authority, as this service is provided by the rural district council. Section 4 of the Local Government (Miscellaneous Provisions) Act, 1953, empowers the parish council to provide and maintain a bus shelter, but makes no mention of lighting. In granting to parish councils the power to provide public clocks, Parliament expressly mentioned the power to light such clocks in s. 2 of the Parish Councils Act, 1957. In your opinion, can the parish council provide a light in the shelter and pay for the electricity consumed?

BOSOL.

Answer.

The parish council will have provided the shelter they are lighting under the Act of 1953; they will not necessarily have provided the clock they are lighting under the Act of 1957. This may account for the different language, but, whatever the reason for the difference, we do not think the insertion of an express power in the later Act need be regarded as throwing doubt on the parish council's power to provide and maintain a light, as part of this shelter, under the earlier Act.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*).

ESSEX MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of an Assistant in the office of the Clerk to the Justices of the Waltham Abbey (with Cheshunt (Herts)) Division.

Applicants should have a good knowledge of the work of a Justices' Clerk's office and be capable of dealing with all the accounts maintained in such an office. Preference will be given to a candidate who is a competent typist.

The post is graded in Grade A (£635 × £30 to £725 plus London Weighting) of the Senior Clerks' Division of the Scheme of Salaries for Justices' Clerks' Assistants.

The appointment is superannuable and the person appointed will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, together with the names of two referees, should reach the undersigned not later than 14 days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Committee.

Office of the Clerk of the Peace,
Tindal Square, Chelmsford.

COUNTY BOROUGH OF WOLVERHAMPTON

Appointment of Male Probation Officer

APPLICATIONS are invited for the above-mentioned appointment, which will be subject to the Probation Rules, 1949–1958. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving officer.

The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than April 4, 1959.

T. T. CROPPER,
Secretary of the
Probation Committee.

48 Waterloo Road,
Wolverhampton.

CITY OF MANCHESTER

Appointment of Additional Whole-time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment and salary will be in accordance with the Probation Rules, 1949 to 1958.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than April 7, 1959.

HAROLD COOPER,
Secretary of the
Probation Committee.

City Magistrates' Court,
Manchester, 1.

COUNTY OF THE ISLE OF WIGHT MAGISTRATES' COURTS COMMITTEE

Appointment of Justices' Clerk's Assistant

APPLICATIONS are invited for the appointment of whole-time Assistant. Applicants should have considerable knowledge of work of Justices' Clerk's office, including collecting and accounting duties, and be capable of taking courts if necessary. Salary Grade "A" of Senior Clerks' Division of Joint Negotiating Committee for Justices' Clerks' Assistants. Appointment will be subject to the National scheme of conditions of service and terminable by one month's notice on either side.

Post is superannuable and subject to medical examination.

Applications, stating age, qualifications and experience, together with names and addresses of three referees, to be received by the undersigned not later than April 8, 1959.

J. G. FARDELL,
Clerk of the Committee.

Market Street,
Ryde, I.W.

DURHAM COUNTY MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of a whole-time Second Assistant in the office of the Clerk to the Hartlepool and Castle Eden Justices on the Senior Clerks' Division Grade "A" scale of salaries—(£635—£725).

The post is superannuable and subject to medical examination.

Applications, stating age, education, qualifications and experience, together with the names of two referees, must reach the undersigned not later than April 1, 1959.

J. K. HOPE,
Clerk to the Committee.

Shire Hall,
Durham.

CITY OF BIRMINGHAM

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor, salary scale B (£1,305—£1,485) per annum. Candidates must have good conveyancing and general legal experience but local government experience is not essential. The solicitor appointed will be engaged in the first place on conveyancing and other general legal work in the Town Clerk's Office but may be deputed from time to time for agreed periods to undertake work at the Law Courts in connexion with police prosecutions.

Post pensionable. Medical examination.

Applications, accompanied by copies of not more than three testimonials, should be delivered to me by April 6, 1959. Canvassing disqualifies.

J. F. GREGG,
Town Clerk.

Council House,
Birmingham, 1.
March, 1959.

SOMERSET COUNTY COUNCIL

County Establishment Officer

SOMERSET county council invite applications for the appointment of County Establishment Officer which will be vacant on July 1, next.

The post is on the establishment of the Clerk of the County Council. Salary: Scale "G" (£1,990 × £60 × £50—£2,280). The post is superannuable, and J.N.C. conditions apply.

The duties cover the whole range of staff administration including manual workers, but excluding teachers.

It is expected that an O. and M. unit will soon be constituted, to be under the general supervision of the Establishment Officer. If necessary, the candidate appointed will be nominated for a training course.

Candidates should name three referees, and state date free to take up duty.

Canvassing, either directly or indirectly, will disqualify.

Applications, endorsed "Establishment Officer," to be delivered to the undersigned not later than April 4, 1959.

E. S. RICKARDS,
Clerk of the County Council.

County Hall, Taunton.

BOROUGH OF HOVE

Senior Assistant Solicitor

SENIOR Assistant Solicitor required, salary Grade A.P.T. IV (£1,025—£1,175). The successful candidate will be required to undertake advocacy, conveyancing, administrative and committee work. The appointment is superannuable and subject to a medical examination.

Applications, stating age, qualifications and experience, with the names and addresses of three referees, must reach the undersigned at the Town Hall, Hove, not later than April 2, 1959.

JOHN E. STEVENS,
Town Clerk.

BOROUGH OF CONWAY

Appointment of Town Clerk and Clerk to Conway Bridge Commissioners

APPLICATIONS are invited from solicitors with local government experience for the above appointment, which will become vacant on August 8, 1959. Knowledge of Welsh is desirable.

The appointment, which is a whole-time one, will be terminable by three months' notice on either side, and will be subject to the Conditions of Service of the Joint Negotiating Committee for Town Clerks and District Council Clerks.

The salary will be that for a borough within the population range of 10–15,000.

Applications, on forms obtainable from the undersigned, to be returned to him, endorsed "Appointment of Town Clerk," not later than March 31, 1959.

Canvassing in any form will disqualify.

ARTHUR L. RALPHES,
Town Clerk.

Council Offices,
Conway.